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No. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

VICARI CONTRACTORS, INC.,
Petitioner,

v.

PARISH OF JEFFERSON
Respondent.

Petition for a Writ of Certiorari to the Court of Appeal, Fifth Circuit State of Louisiana

---

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Can an ordinance of a local governing authority be applied in such a manner that its application, the demolition of petitioner's apartment complex, defeats the implementation of an Act of Congress that itself expresses a statement of Congressional policy, and by which application has eradicated two (2) years of administration through the United States Department of Housing and Urban Development of the National Housing Act. (HUD)?

2. Can a local governing authority demolish private property, seventy-seven (77) units of an apartment complex which received approval of HUD through a competitive selection process for project-based subsidies in connection with the rehabilitation of that complex, after having granted petitioner a building permit for remedial work?

PARTIES

The caption of the case contains the names of all of the parties. Petitioner is a corporation and there is no parent or subsidiary company to be listed.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the opinion of the Court of Appeal, Fifth Circuit, State of Louisiana in the case No. 97CA00168 c/w 97CA00169, lately pending therein, rendered on October 15, 1997.

CITATIONS OF THE OFFICIAL REPORT OF OPINIONS

The opinion of the Court of Appeal, Fifth Circuit, State of Louisiana, is reported as 97-168 (La.App. 5 Cir. 10/15/97, 701 So.2d 250, writs denied 97-3141 (La. 2/20/98), —— So.2d —— (La. Feb. 20, 1998).

STATEMENT OF THE BASIS FOR JURISDICTION

The judgment of the state district court, trial court, for the Parish Of Jefferson, unreported, was signed on August 27, 1996, and appears in the Appendix hereto at p. 9a.

The opinion of the Court of Appeal, Fifth Circuit, State of Louisiana, is dated October 15, 1997 and appears in the Appendix hereto at p. 1a. Rehearing was denied on November 17, 1997. 97-168 (La.App. 5 Cir. 10/15/97) 701 So.2d 250. The Supreme Court of Louisiana denied review on February 20, 1998, 97-3141 (La.2/20/98), —— So.2d —— (La. Feb. 20, 1998). Both of those denials appear in the Appendix hereto at p. 19a and p. 20a.

No application for rehearing to the Supreme Court of Louisiana is permitted. This petition for Certiorari was filed within ninety days of the court's denial of review.

This court's jurisdiction is invoked pursuant to 28 U.S.C.A. § 1257(a), which provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CONSTITUTIONAL PROVISIONS, UNITED STATES CODE, REGULATIONS AND ORDINANCE

The supremacy clause, U.S.C. Const. Art 6, cl.2, requires courts to follow federal, not state, law, and reads as follows:

> Clause 2. Supreme Law of Land
>
> This constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme

> Law of the Land; and the Judges in every State shall be bound thereby, any things in the Constitution or Laws of any State to the Contrary notwithstanding.

This case concerns the "Section 8 Certificate Program," a public housing assistance program established pursuant to Section 8 of the National Housing Act of 1937; pertinent text in (Appendix pp. 48a-54a), 42 U.S.C. § 1437, 42 U.S.C. § 1437f, 42 U.S.C. § 1437f(a), 42 U.S.C. § 1439(d)(1)(A)(i), *Regulations*: 24 C.F.R. § 251.301 (1989), 24 C.F.R. § 882.719 (1989), 24 C.F.R. § 882.719 (b)(2) (1989), *Ordinance*: Jefferson Parish Ordinance No. 18050 (Appendix pp. 22a-47a).

CONCISE STATEMENT OF THE CASE

Petitioner filed a Petition for Damages for Wrongful Demolition of Private Property on June 15, 1992. (Case No. 434-842) (Appendix pp. 55a-62a). That petition was the commencement of litigation in the court of first instance, when the federal questions sought to be reviewed were raised. The method of raising those federal questions was through the use of fact pleading as required by the Louisiana Code of Civil Procedure. The facts pleaded to raise the federal questions are paragraphs VII, VIII, X, XI, XII, XIII, XX, XXI, XXIV, XXVIII. (See Appendix pp. 56a-57a and pp. 59a-60a). Petitioner continued to raise these federal questions in the appellate court, i.e. HUD was the Department of the United States implementing the Supreme Law of the Land, the "Section 8 Certificate Program", a public housing assistance program established pursuant to Section 8 of the National Housing Act of 1937. These federal questions were not considered or passed on by the state courts. The presence of HUD as an arm of the United States Congress has never been recognized throughout this litigation in the state court system.

On July 29, 1991, petitioner, Vicari Contractors, Inc., filed a petition for writ of injunction seeking to enjoin respondent, the Parish of Jefferson, from demolishing petitioner's apartment complex. (Case No. 429-579) (Rec-

ord: Vol. 1, p.1) Petitioner had been informed by respondent on July 25, 1991, that the work order to demolish petitioner's apartment complex would be issued on Friday, July 26, 1991, and demolition would begin on Monday, July 29, 1991. At the commencement of the trial on August 2, 1991, for a preliminary injunction the parties reached an agreement which was dictated into the record on August 2, 1991 (see Appendix pp. 63a-66a). Notwithstanding the agreement, the Parish of Jefferson, respondent, did in fact demolish petitioner's apartment complex albeit respondent, the Parish of Jefferson, had actual knowledge that finality had been reached by petitioner with both the Jefferson Parish Housing Authority and the United States Department of Housing and Urban Development to rehabilitate the apartment complex. (See Appendix pp. 73a-74a)

Petitioner, having received HUD's approval on August 22, 1991, the next day, on August 23, 1991, refused to sign the consent judgment. Petitioner alleged the refusal to sign signified his withdrawal of his consent. Petitioner claims that at that moment, the Parish of Jefferson was required to seek judicial enforcement; respondent rather than do so, the Parish of Jefferson, proceeded at its peril to engage in wrongful conduct by taking private property and destroying it, after admitting by the issuance of a building permit for remedial work (See Appendix p. 67a) that the private property did not need to be destroyed. The agreement which was dictated into the record and reduced to the form of a Consent Judgment was presented to the judge by respondent, the Parish of Jefferson, and signed by him in chambers on August 23, 1991. (Record Vol. 1, pp. 15-17) A petition to annul the Consent Judgment was filed by the petitioner on June 24, 1993, shortly after its discovery of fraud and ill practice. (Case No. 420-579) (Record: Vol. 1, pp. 20-24).

The consent judgment dictated into the record on August 2, 1991, provided, in pertinent part. (Appendix p. 64a)

a) Page 3, lines 16-28 state: (Appendix p. 65a)

> All debris consisting of garbage, waste and combustible materials material shall be removed from the interior of these buildings by 4:30 p.m. on the *24th day of August, 1991.*
>
> A representative of the owner shall be present on the property between the hours of 8:30 a.m. and 3:30 p.m. on the *26th day of August, 1991* to allow inspection of the property by the Jefferson Parish dangerous building abatement inspector.
>
> The owner shall begin renovation of any or all of the buildings on the site by noon on the *third day of September 1991* and continue with renovation until all buildings are completed, until all building are completely renovated. . .

b) Page 4, lines 18-29 states: (Appendix p. 65a)

> Now, finally, although this will not be part of the actual terms of the judgment the parties are agreeing here today that there may be additional provisions that needed to be added to this judgment which were not thought of. That we have attempted to satisfy all requirements of both sides but we have been at this for some two, two and a half hours and may think of additional matters that many need to be addressed later.

c) Page 5, lines 3-11 state: (Appendix p. 65a)

> We further agree that there needs to be some method of inspecting the buildings and the work being performed by the owner to determine whether or not the work being performed satisfies the requirements of this judgment and, if not, *that the owner be given notice that the provisions of this judgment are not satisfied so that he can take steps to rectify any inadequacies or deficiencies in the work he's performed.* (emphasis added)

The plain language of the transcript requires the owner to receive notice of deficiencies and an opportunity to

correct them. Petitioner, Vicari Contractors, Inc., *initiated the meeting of August 22, 1991 for that specific purpose*. None of the deadlines had yet arrived, but were fixed at later dates, i.e. August 24th, 26th, and September 3, 1991. Vicari Contractors, Inc. could not have been in violation on August 22, 1991. HIS TIME HAD NOT YET COME.

Respondent's demolition eradicated two (2) years of administration by HUD and countless man-hours spent to enforce an Act of Congress which contains a statement of Congressional Policy. The Supreme Law of the Land was thus ignored.

The National Housing Act was enacted "to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income * * *." 42 U.S.C. § 1437. Section 8 of the Act is designed to "aid[] lower-income families in obtaining a decent place to live and [to] promote[] economically mixed housing * * *." 42 U.S.C. § 1437f(a); *see Cisneros* v. *Alpine Ridge Group*, 113 S. Ct. 1898, 1900 (1993); HUD is also required to administer Section 8 in a manner that facilitates the racial integration of neighborhoods in which federally subsidized housing is located.

To further these policy goals, the Certificate Program authorizes HUD to enter into contracts with public housing agencies ("PHAs") to provide housing assistance to low-income families. The assistance provided by HUD is generally "tenant based," meaning that the funds provided by HUD to a PHA are tied to a particular housing unit in which a specific family has chosen to reside. 24 C.F.R. § 882.701(b). HUD assistance, however, may also be "project based," meaning that a PHA agrees to provide federal funds to the owner of low-income housing units for a specified term, provided that the units are occupied by an eligible family. 25 C.F.R. § 882.701(b).

Before a PHA can solicit applications for project-based assistance from owners of housing developments, the PHA

must obtain approval from the appropriate HUD field office. *See* 24 C.F.R. §§ 882.703(b), 882.704(a). HUD's oversight role continues even after a PHA has received authorization to solicit applications for project-based assistance. Thus, a PHA is subject to close monitoring and may be required to obtain prior HUD approval before ranking applications, selecting units, or entering into a housing assistance contract with an owner.

In addition, current regulations require HUD to approve all initial contract rents to be charged for units selected to receive project-based assistance. 24 C.F.R. § 882.714(a). The maximum rent levels that will be approved for particular units are determined by the valuation staff of the local HUD field office. In part, the rent determination turns on an analysis of the rents charged for housing units that are comparable in size, location, and certain other respects to those units for which assistance is provided.

Applicants for project-based assistance are also subject to review for compliance with the agency's housing quality standards, 24 C.F.R. § 882.109, and site and neighborhood standards, 24 C.F.R. § 882.404(b). *See* 24 C.F.R. § 882.706. In conducting a site and neighborhood review, HUD officials seek to determine whether a proposed project site: (1) can accommodate the number and type of housing units proposed; (2) will promote compliance with the Fair Housing Act and certain other civil rights provisions; (3) will promote economically mixed neighborhoods by avoiding an "undue concentration" of individuals receiving assistance in areas that have a large proportion of low-income individuals; (4) is "accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents"; and (5) is located in an area that would avoid excessive time and expense in commuting to "places of employment providing a range of jobs for lower-income workers." 24 C.F.R. § 882.404(b).

This case concerns an application for project-based subsidies submitted by Vicari in connection with the rehabilitation of 77 units in a complex know n as Apple Trace II Apartments, located in Jefferson Parish, Louisiana. The public housing agency to which the application was submitted—the Jefferson Parish Housing Authority ("JPHA") —had, in August 1989, received authorization from HUD to provide project-based assistance for 175 housing units. The authorization, however, was conditioned on JPHAs use of a selection process using maximum open and free competition.

In imposing that condition, HUD expressed concern that JPHA might have previously selected owners to receive housing assistance without conducting a competitive selection process.

On or about October 19, 1989, JPHA approved Vicari's application for project-based subsidies for 77 units. As explained above, however, JPHA could not enter into a contract with Vicari to provide the subsidies until HUD approved the schedule of rents that Vicari intended to charge Apple Trace II tenants. *See* 24 C.F.R. § 882.714(a). Before HUD's Region VI field office in New Orleans ("HUD-New Orleans") could determine the appropriate rent levels, HUD-New Orleans received written complaints from two disappointed applicants for project-based assistance. The complaints alleged, *inter alia*, that the approval of Vicari's application for subsidies did not comply with JPHA's selection criteria and that JPHA had improperly awarded the subsidies to Vicari before soliciting applications from other owners on an open, competitive basis. Subsequently, on November 2, 1989, HUD-New Orleans sent a letter to JPHA requesting JPHA to submit documentation in support of its award of project-based subsidies.

On December 29, 1989, after completing its investigation, HUD-New Orleans approved the Apple Trace II project. The approval was conditioned, however, on Vi-

cari's agreement to lease the subsidized units of Apple Trace II at the following monthly rates: (1) $290 for one-bedroom apartments; (2) $330 for two-bedroom apartments; and (3) $410 for three-bedroom apartments. In a letter to the Acting Manager of HUD-New Orleans dated January 19, 1990, JPHA questioned the basis for HUD's rent determination and requested HUD-New Orleans to approve the higher rents proposed by JPHA. HUD-New Orleans rejected this request in a letter dated April 18, 1990.

On July 9, 1990, JPHA proposed substantially higher rents for the Apple Trace II project ($371 for one-bedroom apartments; $438 for two-bedroom apartments; and $550 for three-bedroom apartments). In addition, JPHA requested HUD to provide coinsurance for the project.

Regulations implementing the coinsurance program required HUD to perform various studies of the Apple Trace II project, including an environmental review in which the demographics and other characteristics of the project's neighborhood were to be assessed. *See* 24 C.F.R. § 251.301 (1989). In September 1990, HUD determined that the proposed rent levels were excessive and that the location of the Apple Trace II Apartments was unsuitable under the standards of the coinsurance program. HUD concluded that the property was located in an area that already had a substantial number of low-income and minority persons; providing assistance to the project, therefore, would not promote economic and racial diversity.

The responsible official at HUD-New Orleans, Joe R. Brinkley, who was at that time the Acting Field Office Manager, concluded that he could not ignore the coinsurance study. Accordingly, after consulting with an official at HUD's headquarters in Washington, D.C., Mr. Brinkley arranged for the Fair Housing Equal Opportunity Division of HUD-New Orleans to conduct a site and neighborhood analysis of the Apple Trace II project site. Like the earlier review of the coinsurance application, the site and neigh-

borhood analysis revealed that the Apple Trace II area was already heavily populated by low-income and minority residents. HUD concluded, therefore, that the site could absorb only 20 percent of the 77 proposed subsidized units, or 15 units, consistent with the goal of promoting economic and racial diversity.

On November 19, 1990, HUD-New Orleans explained to JPHA that the Apple Trace II Apartment project could not be approved because it did not meet HUD's site and neighborhood standards and the rents proposed by JPHA were excessive. HUD stated, in a letter to JPHA on November 26, that only 20 percent of the 77 proposed units could be funded under the project-based assistance program. On December 14, 1990, in response to a new request from JPHA, HUD-New Orleans stated that the following monthly rent was appropriate for the Apple Trace II project: (1) $260 for one-bedroom apartments; (2) $325 for two-bedroom apartments; and (3) $350 for three-bedroom apartments.

On February 5 and March 1, 1991, meetings were held between Vicari, HUD-New Orleans, and JPHA officials. On March 5, 1991, HUD-New Orleans agreed to the following rent schedule: (1) $300 for one-bedroom apartments; (2) $360 for two-bedroom apartments; and (3) $405 for three-bedroom apartments. Although HUD-New Orleans agreed to these higher rents, it still concluded that, due to the large percentage of low-income and minority families already in the area, only 15 units of project-based assisted housing could be approved.

Vicari was satisfied with the new rent schedule, but opposed the limitation of subsidies to 15 of the 77 units for which project-based assistance was sought. On August 12, 1991, Vicari appealed to HUD Region VI headquarters in Fort Worth, Texas. Officials of Region VI headquarters determined that the geographical area to be examined for purposes of the Apple Trace II site and neighborhood standards review should be broadened to more

closely approximate the boundaries of the census tract in which the project site was located. A net site and neighborhood study was performed by HUD-New Orleans, using this broader geographical area. This change permitted the HUD field economist performing the new study to conclude that the Apple Trace II project would not result in an undue concentration of persons receiving low-income housing assistance and that therefore all 77 units could be funded by HUD. On August 22, 1991, HUD notified JPHA that it could enter into a contract with Vicari for project-based assistance for the 77 units at the approved rent levels. (See Appendix pp. 73a-74a)

One week later, on August 29, counsel for Vicari submitted an application for FHA mortgage insurance to HUD Region VI headquarters in Fort Worth, requesting a firm commitment on insurance by October 1, 1991. HUD-New Orleans responded that it could not give a firm commitment any sooner than 60 to 90 days from receipt of a completed application. As a result of respondent's demolition of petitioner's apartment complex, on November 7, 1991, JPHA cancelled its contract with Vicari.

ARGUMENT AMPLIFYING REASONS

The structure and purpose of the National Housing Act was enacted to remedy the unsafe and unsanitary housing conditions in the United States. This federal statute creates a scheme or federal regulation "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it . . . *Barnett Bank of Marion County v. Nelson,* 517 U.S. 25, 116 S.Ct. 1103. The local law as applied to petitioner's property was in irreconcilable conflict with the execution of the full purpose and objectives of Congress. In such a case, the Supremacy Clause requires state courts to follow federal, not state, law. U.S. Const., Art. VI, cl. 2. The United States Congress had committed two years of its resources through HUD to rehabilitate the petitioner's apartment complex. The Su-

premacy Clause must be recognized by the state courts and prevent the application of a local ordinance as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Past cases decided by this Honorable Court have recognized that ". . . the Supremacy Clause may entail pre-emption of state law either by express provision, by implication, or by a conflict between federal and state law. . . . On the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. . . ." *New York State Conference of Blue Cross & Blue Shield Plans, the Travelers Insurance Company, et al.,* 514 U.S. 645, 115 S.Ct. 1671 "Pre-emption analysis, rather, turns on the actual content of respondent's policy and its real effect on federal rights. . . . But such reasoning mistakes a standard for validity under the Equal Protection and Due Process Clauses for what the Supremacy Clause requires. . . . It is instead to decide if a state rule conflicts with or otherwise 'stands as an obstacle to the accomplishment and the execution of the full purpose and objectives' of the federal law," *Livadas v. Bradshaw,* 512 U.S. 107, 114 S.Ct. 2068, accordingly, "the purpose of Congress is the ultimate touchstone" of pre-emption analysis. *Malone v. White Motor Corp.,* 435 U.S. 497, 504, 98 S.Ct. 1185, 1189-1190, 55 L.Ed. 2d 443 (1978).

Therefore, the answers to the questions presented are really simple. Congress stated its purpose in the Fair Housing Act; additionally, Congress, through HUD, expended two years of administration and countless manhours during that time, all dedicated to the rehabilitation of the petitioner's apartment complex as an instrument in the implementation of the Fair Housing Act. The ordinance of a local governing authority as applied cannot stand as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law.

CONCLUSION

Therefore, this Honorable Court should grant petitioner's Application for a Writ of Certiorari to review the opinion of the State Court of Appeal which, fails to even mention the presence of HUD and its conclusion of two years of processing as directed by the United States Congress to rehabilitate petitioner's apartment complex to accomplish the objectives of the Fair Housing Act.

Respectfully submitted,

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APPENDIX

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APPENDIX

COURT OF APPEAL
FIFTH CIRCUIT
STATE OF LOUISIANA

No. 97-CA-168 C/W
97-CA-169

VICARI CONTRACTORS, INC.

versus

PARISH OF JEFFERSON

Appeal from the Twenty-Fourth Judicial District Court
Parish of Jefferson, State of Louisiana
Number 420-579 S/W 434-842, Division "N"
Honorable Susan M. Chehardy

ROBERT J. BURNS
JUDGE, PRO TEMPORE

October 15, 1997

(Court composed of Judges James L. Cannella, Thomas F. Daley, Robert J. Burns, Pro Tempore)

This is a suit for damages for the wrongful demolition of private property brought by Vicari Construction, Inc.

(hereinafter "Vicari") against the Parish of Jefferson (hereinafter "the Parish"). The defendant and the plaintiff were bound by a consent judgment regarding the renovation of various buildings owned by Vicari. Vicari failed to comply with the terms of the consent judgment. Pursuant to the terms of the consent judgment, the Parish demolished Vicari's buildings.

Vicari filed a petition seeking damages for the wrongful demolition of private property, and, over a year later, a petition to annul the consent judgment. On the first day of trial, Vicari amended its petition to limit the various claims asserted in its original petitions to a single claim for damages as a result of the wrongful enforcement of the consent judgment. Following a bench trial, the trial judge, without reasons, denied Vicari's petition to annul, and ruled in favor of the Parish on the issue of liability for the demolition of Vicari's buildings.

On appeal, Vicari asserts eight assignments of error. Based upon the record before us, we find that the trial court properly denied both Vicari's motion to annul the August 2, 1991 consent judgment and Vicari's petition for damages for the wrongful demolition of private property. In essence, the trial court found that the parish had the right to enforce the consent judgment and demolish the property. We agree with the trial judge and, therefore, affirm her judgment.[1]

I. HEARING OFFICER PROCEEDING

Vicari was notified by a certified letter that a hearing pursuant to Jefferson Parish's dangerous building ordinance would be held. The purpose of this letter was to notify Vicari that the Parish was seeking an order re-

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[1] Although Vicari amended its petitions to limit the claims asserted therein to a single claim for damages for the wrongful demolition of private property, we deem it necessary to address the validity of the consent judgment.

quiring that Vicari's apartment buildings be either vacated and repaired, demolished, or secured.

At the hearing, Vicari was represented by the president of its board of directors, Mr. Pete G. Vicari, and the Parish was represented by numerous parish officials. The hearing officer issued an order giving Vicari thirty days from the date of the order to do one of the following: (1) secure the buildings in accordance with Jefferson Parish's dangerous building ordinance, (2) obtain a building permit and make the necessary repairs, or (3) obtain a building permit for the demolition of the buildings. The order also provided that in the event that Vicari failed to comply with the order, the Parish was authorized to demolish the buildings and place a lien on the property for the costs incurred by the demolition. The Parish recorded this order in the mortgage records for Jefferson Parish.

Vicari did not take any action as required by the hearing officer's order. Vicari was notified by the Parish that demolition of its buildings would commence on July 29, 1991.

II. VICARI'S REQUEST FOR PRELIMINARY INJUNCTION—THE CONSENT AGREEMENT

Vicari filed for a petition for injunction on July 29, 1991, claiming that it had been unable to take any action pursuant to the hearing officer's order for various reasons, but admitting that it had been given an additional thirty days to comply with the order. A temporary restraining order was granted by the trial court on July 29, 1991.

On August 2, 1991, a hearing was held on Vicari's petition for a preliminary injunction. *Vicari's counsel read a consent judgment into the record.* The Parish agreed that by August 6, 1991, it would cancel the inscription of the hearing officer's order from the mortgage records. Vicari agreed to perform various work by August 24, 1991, and to have a representative on the property

on August 26, 1991 for an inspection of the work performed. The consent judgment also provided that if Vicari should fail to comply with its terms, *the Parish could thereafter demolish the buildings without giving Vicari further notice,* and that Vicari would bear all costs of any such demolition. The consent judgment was later reduced to written form and signed by both the trial judge and the Parish's attorney. However, Vicari's attorney refused to sign the consent judgment.

In compliance with the consent judgment, the Parish canceled the order from the mortgage records on August 6, 1991. At a meeting held on August 22, 1991, the Parish notified Vicari that it intended to go forward with the demolition of Vicari's buildings, as provided in the consent judgment if Vicari had not complied with the terms of the consent judgment. By its own admission, made in open court on March 4, 1996, *Vicari never attempted to comply with the terms of the consent judgment.* The Parish began demolition on September 15, 1991. Demolition continued through February 4, 1992. During the four month period, Vicari took no legal action to stop the demolition. The Parish placed a lien on the property in the mortgage records for the costs of the demolition.

III. VALIDITY OF THE CONSENT JUDGMENT

Vicari's complains that the trial judge erred in dismissing Vicari's petition to annul the August 2, 1991 consent judgment, and in failing to find that Vicari's refusal to sign the consent judgment established a lawful withdrawal of its consent.

Louisiana Civil Code Article 3071 provides as follows:

> A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree

> on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.
>
> This contract must be either reduced into writing *or recited in open court* and capable of being transcribed from the record of the proceeding. This agreement recited in open court confers upon each of them the right of judicially enforcing its performance, although its substance may thereafter be written in a more convenient form. (Emphasis added).

In *Plaquimines Parish Government v. Getty Oil Co.*, 95-2452, p. 6 (La. 5/21/96); 673 So.2d 1002, 1006, the Louisiana Supreme Court discussed consent judgments as follows:

> A consent judgment is a bilateral contract wherein parties adjust their differences by mutual consent and thereby put an end to a lawsuit with each party balancing hope of gain against fear of loss. La.Civ. Code art. 3071; *Preston Oil Co. v. Transcontinental Gas Pipe Line Corp.*, 594 So.2d 908, 913 (La.App. 1st Cir.1991). A judgment, whether it results from the assent of the parties or is the result of a judicial determination after a trial on the merits, is and should be accorded sanctity under the law. *Preston Oil Co.*, 594 So.2d at 913.

This Court finds no merit to Vicari's claims as listed above. As the consent judgment was recited in open court by Vicari's attorney, both Vicari and the Parish were bound by the terms of the consent judgment.

IV. VICARI'S DAMAGE SUIT

On June 15, 1992, four months after the property was demolished, Vicari filed a petition for damages for the wrongful demolition of its buildings against the Parish in the 24th Judicial District Court. Over a year later, on June 24, 1993, Vicari filed a petition to annul the con-

sent judgment that its attorney read into the record in open court August 2, 1991.[2] The parties agreed to bifurcate the trial.

On the first day of the bench trial on the issue of liability, counsel for both Vicari and the Parish stipulated to an amendment of Vicari's petition. The amendment limited the claims asserted in Vicari's original petitions to a claim for damages as a result of the wrongful enforcement of the consent judgment. Vicari's attorney thereafter stated that both he and the Parish's attorney were in agreement that Vicari's petition to annul the consent judgment was "moot."

Following the submission of post-trial memoranda, the trial judge, without reasons, denied Vicari's petition for annulment of the August 2, 1991 consent judgment, and ruled in favor of the Parish on the issue of liability for the destruction of Vicari's buildings. Vicari has appealed to this Court, alleging eight assignments of error.[3]

V. DID THE PARISH WRONGFULLY ENFORCE THE CONSENT JUDGMENT?

Vicari complains that the trial judge erred as follows: (1) in failing to find that the conduct of the Parish was a wrongful enforcement of the consent agreement, (2) in failing to find that the Parish's wrongful enforcement of the consent agreement was a cause in fact of damages sustained by Vicari, and (3) in failing to find that the

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[2] The suit seeking damages for the wrongful demolition of Vicari's buildings was designated as district court case number 420-579. The suit seeking the annulment of the consent judgment was designated as district court case number 434-842. These cases were consolidated at the district court level.

[3] In its brief, Vicari alleges a number of procedural errors that allegedly occurred at trial. Appellate counsel for Vicari did not address these procedural issues in oral argument. We have reviewed the record and find no merit to these claims.

law required the Parish to give Vicari notice prior to the demolition of the buildings.

We find no merit to Vicari's claims as listed above. The consent judgment provided that Vicari would perform specific work on its buildings by 4:30 P.M. on August 24, 1991, and that Vicari would have a representative on the property between the hours of 8:30 A.M. and 3:30 P.M. on August 26, 1991 for an inspection of the work Vicari had performed. The consent judgment also provided in pertinent part:

> . . . the owner consents that upon his failure to comply with the provisions of this Order for any reason whatsoever save for an Act of Force Majeure, the buildings may be *totally and completely demolished* by the Parish of Jefferson *without further notice* to the owner with the owner to bear all costs of demolition . . . . (Emphasis added).

Thus, the consent judgment provided that should Vicari fail to comply with its terms, the Parish could thereafter totally and completely demolish Vicari's buildings without giving Vicari any further notice. *By its own admission made in open court on March 4, 1996, Vicari never attempted to comply with the terms of the consent judgment.* Therefore, the consent judgment authorized the Parish to demolish Vicari's buildings. We find that the Parish did not wrongfully enforce the consent judgment. Therefore, we also find that the Parish was not a cause in fact of any damage sustained by Vicari as a result of the demolition of its buildings.

Finally, Vicari's contention that it did not receive notice according to law is unsupported by the record. Vicari received notice of the hearing to be held before a hearing officer, as required by the Jefferson Parish Code of Ordinances, § 19-63. The consent judgment specifically provided that should Vicari fail to comply with its terms, the Parish could demolish Vicari's buildings without giving

Vicari any further notice. In fact, although the consent judgment did not require the Parish to give Vicari any further notice prior to demolishing the buildings, Vicari was notified during a meeting held on August 22, 1991 that demolition would commence in September should Vicari fail to comply with the terms of the consent agreement. Accordingly, we find that Vicari did receive notice as required by the law, as well as in accordance with the consent agreement that it entered into.

CONCLUSION

We find that the consent judgment is valid. We further find that the Parish had the right to demolish the buildings in accordance with the consent judgment. Therefore, we affirm the trial court judgment in all respects. We further order Vicari to bear all costs of this appeal.

AFFIRMED.

[Filed Aug. 27, 1996]

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA
DIVISION "N"

No. 420-579
C/W 434-842

VICARI CONTRACTORS, INC.

versus

PARISH OF JEFFERSON

JUDGMENT

This matter originally came before the court in the form of a Petition for Writ of Injunction filed on July 29, 1991 by plaintiff, Vicari Contractors against the Parish of Jefferson. The parties entered into a Consent Judgment on August 2, 1991 which was signed by Judge G. Thomas Porteous, Jr. on August 23, 1991. Thereafter, plaintiff, Vicari Construction, Inc., filed a Petition for Damages on June 15, 1992 in case #434-842. Plaintiff then filed a Petition to Annul Judgment on June 24, 1993 to annul the aforemention consent judgment. Case #434-842 was transferred to this division on April 7, 1993. Defendant, the Parish of Jefferson filed a Motion to Sever Liability and Damages which was granted by the Court on April 27, 1995. The case came for trial on the merits on March 4, 1996, March 14, 1996 and March 15, 1996 on the issue of the nullity of the August 2, 1991 Consent Judgment and the issue of liability as to the Peti-

tion for Damages. Following the trial, the Court gave the parties time to file post-trial memoranda.

Present:

Stephen J. Caire and Duane Dunn, attorneys for plaintiff, Vicari Contractors, Inc.

Daniel A. Ranson and Michael O. Peytavin, attorneys for defendant, Parish of Jefferson

Considering the law, the evidence, the pleadings and the memoranda of counsel;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's Petition to Annul the August 2, 1991 Consent Judgment is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of defendant, Parish of Jefferson, and against plaintiff, Vicari Contractors, Inc., with regard to the issue of liability on the Petition for Damages filed by Vicari Contractors on June 15, 1992.

GRETNA, LOUISIANA this 27th day of August, 1996.

/s/ [Illegible]
Judge

ORDER OF THE BUILDING OFFICIAL
PARISH OF JEFFERSON
STATE OF LOUISIANA

On the 24th day of May, 1991, a hearing was held pursuant to Chapter 19 of the Code of Ordinances of the Parish of Jefferson, State of Louisiana, to determine whether the building(s) described in this order is/are dangerous building(s) as that phrase is defined in Section 19-61 of the Code of Ordinances, and if so, whether or not such building(s) must be vacated, secured, and/or repaired or demolished.

The building(s) which was/were the subject of this hearing is/are located on the following described property:

Lot 15-B, Square C, Westside Terrace Subdivision and is identified as:

Building "18"

The hearing was held in the Westbank Council Chambers, Second Floor, New Courthouse Building, Gretna, LA. Mr. Leonard Beller, Architect, presided as Hearing Officer. The persons appearing at the hearing are listed on Exhibit A which is attached hereto and incorporated herein.

All witnesses were sworn in and the Hearing Officer heard the evidence presented by all parties.

The Hearing Officer, having considered all of the evidence, hereby duly makes the findings and conclusions set out in Exhibit B, which is attached hereto and incorporated herein.

It is therefore ORDERED by the Hearing Officer of the Parish of Jefferson, Louisiana, that:

YES—— NO—— this matter be dismissed.

Yes—— NO—— this matter shall be reset for hearing.

Yes—— NO—— the owner of the property take the action set out in Exhibit C, which is attached hereto and herein incorporated.

SIGNED, on this 24 day of May, 1991.

/s/ Leonard E. Beller
Hearing Officer

THE STATE OF LOUISIANA, PARISH OF JEFFERSON

Before me, the undersigned authority, on this day personally appeared Leonard Beller, known to me to be the person acknowledged to me that he executed the same for the purposes herein experssed.

Given under my hand and seal of office this 24th day of May, 1991.

/s/ [Illegible]
Notary Public

EXHIBIT A

The following persons appeared for the Parish in their official capacities:

> Pete Schneckenburger, Dangerous Building Abatement, Housing Officer; Barbara Bruce, Parish President's Office, Clerk; Cindy Laborie, Parish President's Office, Clerk and Abstractor; Perrin C. Butler, Jr., Assistant Parish Attorney; Timothy P. O'Rourke, Assistant Parish Attorney as Notary; and a representative of both the Fire and Health Departments.

The following persons claiming an interest in the property appeared at this hearing:

/s/ Peter G. Vicari (owner)

In addition, the following persons appeared in regard to the subject of this hearing.

EXHIBIT B

1. The official records of the Parish in which the property is situated indicated that the following persons are owners of the property described in this Order:

   Vicari Contractors, Inc.

   and that the following persons are mortgagees or lienholders on said property:

   Louisiana Housing Finance Agency
   Roizman & Associates
   Schwegmann Bank & Trust Company

   In addition, the following persons may have or claim to have an ownership interest in the property:

   and the following persons may have or claim to have a lien or mortgage on the property:

   The following persons, although listed in the records, state that they no longer have an interest in the property:

2. Yes ☒ No — Notice was given pursuant to Chap-19 of the Code of Ordinances, Jefferson Parish, Louisiana.

3. The building(s) on the property described in this order which is/are the subject of this hearing is/are:

   (a) *Building "18"—Wood frame, flat roof, multi-family, 2-story apartment building*
   (address-description)

   (i) Yes ☒ No — The building is dilapidated, substandard, or unfit for human habitation.

   (ii) Yes ☒ No — The building constitutes a hazard to the health, safety or welfare of its occupants and/or the citizens.

(iii) Yes ☒ No — The building is a dangerous building within the terms of Section 19-61 of the Code of Ordinances.

(b)

(address-description)

(i) Yes — No — The building is dilapidated, substandard, or unfit for human habitation.

(ii) Yes — No — The building constitutes a hazard to the health, safety or welfare of its occupants and/or the citizens.

(iii) Yes — No — The building is a dangerous building within the terms of Section 19-61 of the Code of Ordinances.

EXHIBIT C

SECURE, REPAIR OR DEMOLISH

THE FOLLOWING ACTION SHALL BE TAKEN IN REGARD TO THE BUILDING DESCRIBED UNDER ITEM 3 OF EXHIBIT B:

1. Yes ☒ No — The building shall be posted immediately as a dangerous building in accordance with Sec. 19-61 of the Jefferson Parish Code of Ordinances.

2. Yes ☒ No — The owner has until the 30th day following the date of this Order to perform one of the following:

   (a) secure the building and keep it secured in accordance with the Building Official's specifications adopted pursuant to Sec. 19-63(F)(4) of the Code of Ordinances, which are filed in the Office of the Clerk of the Parish Council.

   (b) obtain a building permit from the Jefferson Parish Department of Inspection and Code Enforcement for the repair of the building and begin repairs to the building in conformity with all applicable Parish & State Codes (NOTE: The procedure for obtaining a building permit may take several days and may require the submission of plans, depending upon the nature of the work to be done); or

   (c) obtain a building pemit from the Jefferson Parish Department of Inspection and Code Enforcement for

the demolition of the building and begin to demolish the building (NOTE: it is not possible to obtain a building permit for demolition without your first ensuring that a licensed plumber has obtained a plumbing permit and plugged the sewer, if any, at the property line).

3. In the event that the owner complies with item 2, above, by securing the building as provided in subsection (a), then this file shall remain active for a period of 3 years from the date of signature of the order as provided by Section 19-63(H) of the Jefferson Parish Code of Ordinances.

4. In the event that the owner complies with item 2, above, by timely obtaining a building permit for the repair of the building as provided in subsection (b), then such repairs are to be completed by the 60 day following the date of this Order.

5. In the event that the owner complies with item 2, above, by timely obtaining a building permit for the demolition of the building as provided in subsection (c), then such demolition is to be completed by the 60 day following the date of this Order.

6. Yes ☒ Not Applicable — If the owners fail to take any action required by this Order by the time specified above, then a notice, including a copy of this order shall be mailed by certified mail, return receipt requested, to each mortgagee and lienholder, and the mortgagees / lienholders shall have 30 days from the date the notices are placed in the United States mail to

timely comply with item 2, above. In the event the mortgagees/lienholders timely comply with 2(b), above, by taining a building permit for repairs to the building or timely comply with 2(c), above, by obtaining a permit for demolition of the building, then they shall have the same number of days allowed to the owner for completion of the work, as provided in item 4, or 5, as applicable.

Upon the earliest date of any failure by the owner to timely comply with this Order, or upon the earliest date of any failure by the mortgagees/lienholders to comply with the Order (if applicable), the Parish of Jefferson shall be authorized to completely demolish and remove said building.

If the Parish of Jefferson demolishes and removes the building pursuant to this Order, the Parish shall be entitled to place a lien on such property for all administrative expenses and demolition costs incurred by reason of such demolition together with interest as provided by law.

COURT OF APPEAL, FIFTH CIRCUIT
STATE OF LOUISIANA

Clerk's Office, Gretna
Nov. 17, 1997

DEAR SIR:

REHEARING WAS THIS DAY REFUSED IN THE CASE ENTITLED

No. 97 CA 168 C/W 97 CA 169

VICARI CONSTRUCTION, INC.

v.

PARISH OF JEFFERSON

Very truly yours,

PETER J. FITZGERALD, JR.
Clerk

THE SUPREME COURT
OF THE STATE OF LOUISIANA

No. 97-C - 3141

VICARI CONTRACTORS, INC.

vs.

PARISH OF JEFFERSON

IN RE: Vicari Contractors Inc.; —Plaintiff(s); Applying for Writ of Certiorari and/or Review; Parish of Jefferson 24th Judicial District Court Div. "N" Number 420-579, 434-842; to the Court of Appeal, Fifth Circuit, Number 97-CA-0168, 97-CA-0169

February 20, 1998

Denied.

WFM

PFC

CDK

BJJ

JPV

CDT

JTK

LEMMON, J. not on panel.

Supreme Court of Louisiana
February 20, 1998

/s/ [Illegible]
Clerk of Court
For the Court

ORDINANCE NO. 18050

ENACTED BY THE JEFFERSON PARISH COUNCIL

On motion of Mr. DeViney, seconded by Mr. Ward, the following ordinance was offered:

SUMMARY NO. 15433 ORDINANCE NO. 18050
An ordinance amending Chapter 19 of the Code of Ordinances regarding "Nuisances" relating to the repair and condemnation of buildings, dwellings and other structures that have become derelict and present a danger to the health and welfare of the residents of the Parish and to provide for related matters.

WHEREAS, the Jefferson Parish Council finds that:

(1) Structures which are vacant and open to entry at doors, windows or other points accessible to the general public:

(a) Attract children to enter;

(b) Become harborage for vermin;

(c) Serve as temporary abode for derelicts, vagrants, criminals;

(d) Serve as havens for illicit activity such as the sale and use of illegal drugs; and

(e) Are being damages by vandals and set ablaze by arsonists.

(2) Unkept grounds surrounding such vacant, open structures invite the dumping of garbage, rubbish and junk autos thereupon.

(3) Most of the vacant and open structures in Jefferson Parish are made of wood-frame construction which is more flammable than other building types.

(4) Many of the vacant and open structures in Jefferson Parish are situated on narrow lots and

in close proximity to one another, thereby increasing the risk of conflagration and spread of insect and rodent infestation.

(5) Population loss and economic decline experienced by Jefferson Parish in recent years has caused the incidence of vacant, open structures to increase significantly.

(6) Such vacant, open structures often become dilapidated because they are left unsecured and unrepaired by the owers or persons in control of said structures.

(7) Vacant and open structures are not only dangerous, but they depress the market value of surrounding properties. Many times adjacent property owners are left unable to renew insurance on their property. Additionally, when they decide to sell their property they are unable to attract buyers, or prospective buyers are unable to obtain financing due to the added risks lending institutions are unwilling to bear.

THE JEFFERSON PARISH COUNCIL HEREBY ORDAINS:

SECTION 1. That a new article, Article V, be added to Chapter 19 of the Code of Ordinances, with Sections numbered 19-60 through 19-71 thereunder, to read as follows:

ARTICLE V. DANGEROUS BUILDINGS

Sec. 19-60. Declaration as Nuisance.

All buildings or structures located outside incorporated municipalities within the Parish of Jefferson which are injurious to or a danger to the public health, safety, morals or welfare of the people of the Parish of Jefferson, as hereinafter defined, are hereby declared to be public nuisances.

Sec. 19-61. Definition.

All buildings or structures which have any or all of the following defects shall be deemed "dangerous buildings" which constitute a public nuisance:

(a) Those which are structurally unsound, as follows:

(1) Those which have interior walls or other vertical structural members that list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

(2) Those which, exclusive of the foundation, show thirty-three (33) percent or more of damage or deterioration of the supporting member or members or fifty (50) percent of damage or deterioration of the nonsupporting enclosing or outside walls or covering.

(3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.

(4) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or people of the parish.

(b) Those which are unhealthful, as follows:

(1) Those which are so dilapidated, decayed or unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease,

so as to work injury to the health, morals, safety or general welfare of those occupying such building.

(c) Those which constitute a fire hazard, as follows:

(1) Those buildings containing electrical wiring or appliances in dangerous and defective condition likely to cause fire. Electrical wiring and appliances installed or in use which are not in compliance with the provisions of any ordinance of the parish regarding such wiring or appliances and the installation thereof shall be deemed dangerous and defective.

(2) Those buildings containing gas plumbing or appliances in dangerous or defective condition likely to cause fire. Gas plumbing or appliances installed or in use which are not in compliance with the provisions of any ordinances of this parish regulating such plumbing and appliances and the installation thereof shall be deemed dangerous and defective.

(3) Those buildings which contain combustible or explosive matter or accumulation of rubbish, trash or unnecessary accumulation of waste paper, boxes, shavings or any highly flammable materials especially liable to fire, therein, or in close proximity thereto.

(4) Those buildings containing numerous openings in the walls or other unstopped spaces throughout, attributable to vandalism or general disrepair, which increase the risk of conflagration in the area.

(5) Those buildings which are vacant and have windows, doors or other openings which

remain unsecured permitting entry by unauthorized persons.

(6) Those buildings which contain other fire hazards in violating of the National Fire Prevention Act, the State Fire Marshall Act, the building code, any provisions of this code or other ordinances of this parish if the violation is of such a nature that the building constitutes a danger to its occupants and/or others.

(d) Those which are otherwise dangerous to human life:

(1) Those, regardless of their structural condition, which have during times that they were not actually occupied by their owners, lessees or other invitees, been left unsecured from unauthorized entry to the extent that they may be entered and utilized by vagrants or other uninvited persons as a place of harborage or may be entered and utilized by children as a play area.

(2) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.

(3) Those which are not provided with adequate egress.

(4) Those buildings existing in violation of any provisions of this Code, the building code, the fire code, or other ordinances of this parish if the violation is of such a nature that the building constitutes a danger to its occupants and/or others.

(e) A building that is boarded up, fenced or otherwise secured in any manner may, nevertheless, be deemed to be a dangerous building under the foregoing criteria if:

(1) The building constitutes a danger to the public even though secured from entry; or

(2) It is found that the means utilized to secure the building are not adequate to prevent unauthorized entry of the building in contravention of (d)(1) above.

Sec. 19-62. Duties of housing officer.

The Director of the Department of Inspection and Code Enforcement shall designate a housing officer whose duties shall be as follows:

(1) To inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of the terms of this article;

(2) Inspect any building, wall or structure reported by the fire, health or police department of this parish as probably existing in violation of the terms of this article;

(3) Inspect buildings in the parish to determine whether they are "dangerous buildings" within the terms of section 19-61.

(4) Document the existence of buildings that are found to be dangerous incorporating the reports of the fire, health and police departments where applicable.

(5) Schedule a hearing pursuant to section 19-63, fulfilling the notice requirements to interested parties as provided therein, and further notifying other involved parish officials so that they may attend and testify when appropriate.

(6) Appear at all hearings conducted pursuant to section 19-63 of this Code and testify as to the conditions existing in the "dangerous building".

(7) Place notices and/or placards on "dangerous buildings" as ordered by the hearing officer pursuant to section 19-63, or as otherwise required by this article.

Sec. 19-63. Notice of hearing; hearing, placarding of building or structure.

(a) If a building or structure has, upon inspection, been found to be dangerous, then written notice shall be made as follows:

(1) Notice is served upon the owner in the same manner as service of citation or other process, whether made by sheriff, deputy sheriff, constable, or duly authorized building inspector of the parish.

(2) Notice is served by registered or certified mail, return receipt requested, sent to the owner at his last known address listed on the tax rolls of the parish.

(3) Notice is served in the same manner as service of citation or other process upon any mortgagee or any other person who may have a vested or contingent interest in the premises as indicated in the mortgage or other public records of the parish, if the owner is absent or is unable to be served in accordance with (1) or (2) above.

(4) Notice is made by publication once a week for two weeks consecutively in the official journal, if the owner is absent or is unable to be served in accordance with (1), (2), or (3) above.

(b) In addition to the notice requirements above, a copy of such notice shall be posted in a con-

spicuous place on the building found by the building inspector to be dangerous.

(c) The notice shall inform the interest parties that a hearing will be held in which the parish will seek an order requiring the building to be vacated and/or requiring the building to be repaired or demolished and/or secured upon a finding that the building is dangerous and that it constitutes a hazard to the health, safety or welfare of its occupants and/or citizens of this parish. Such notice shall also set forth:

(1) The specific conditions which render the building a dangerous building within the standards set forth in 19-61;

(2) That a hearing will be held before a hearing officer designated pursuant to this article in which the parish will seek an order that the building be vacated and/or that the building be repaired or demolished and/or secured as provided in subsection (f) of this section;

(3) The date, time and place of such hearing; and

(4) That all persons having an interest in the property may appear in person and/or represented by an attorney and may present testimony and may cross-examine all witnesses.

(d) All hearings shall be held by an engineer employed by the Parish of Jefferson Department of Engineering or by a professional engineer registered pursuant to the laws of the State of Louisiana and designated by the director of the Department of Engineering. Such official shall be referred to as the hearing officer provided,

however, that the said director shall not designate any person to perform the duties of hearing officer under this section who has had prior knowledge of the conditions of such building, except such person designated as hearing officer may, prior to the hearing, receive a copy of the notice given to the owners.

(e) All hearings shall be conducted under rules consistent with the nature of the proceedings; provided, however, the following rules shall apply to such hearings:

(1) All parties shall have the right to representation by a licensed attorney, though an attorney is not required.

(2) Each party may present witnesses in his own behalf.

(3) Each party has the right to cross-examine all witnesses.

(4) Only evidence represented before the hearing officer at such hearing may be considered in rendering the order.

A representative of the legal department shall be present at each such hearing to advise the hearing officer as to procedural matters; however, such attorney shall not otherwise participate in the proceedings.

If no person having an interest in the building appears before the hearing officer at the date and time specified, the housing officer shall procure evidence showing the building to be a dangerous building within the standards set forth in section 19-61 and that same constitutes a hazard to health, safety and welfare of the citizens.

(f) After completion of the presentation of testimony by all parties appearing, the hearing officer shall make written findings of fact as to whether or not the the buildings are dilapidated, substandard or unfit for human habitation and constitutes a hazard to the health, safety or welfare of occupants and/or the citizens, and whether or not the buildings in question are dangerous within the standards set forth in section 19-61.

If the hearing officer finds that any building is dilapidated, substandard or unfit for human habitation and that same constitutes a hazard to the health, safety or welfare of its occupants and/or the citizens, and that same is a dangerous building within the terms of section 19-61, he shall issue an order directing the owner, occupant and all other persons having an interest in said building as shown by the mortgage and conveyance records of the parish where the land is located:

(1) That the building shall be vacated if same is occupied and the hearing officer finds that the building is in such condition as to make it dangerous to the health, safety or welfare of its occupants;

(2) That the building shall be either repaired or demolished (at the owner's option) if it can reasonably be brought into compliance by repair;

(3) That the building be demolished if it cannot reasonably be repaired; and/or

(4) If the building is unoccupied and the condition of the building is such that it may be brought into compliance by securing it from unauthorized entry, then the order

may provide that it be so secured and be kept secured and may include or adopt written specifications that must be complied with in securing the building and the order may provide that the building be demolished if it is not secured in compliance therewith.

If the hearing officer finds that the building is substandard as above described and in such condition as to make same dangerous to the health, safety or welfare of its occupants or to the citizens, the hearing officer shall order that the parish place a notice in a conspicuous place on such building; such notice to read in letters at least two and one-half (2½) inches high, the words:

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING. OCCUPANCY OF THIS BUILDING IS PROHIBITED BY LAW AS SUCH OCCUPANCY IS DANGEROUS TO THE HEALTH, SAFETY AND WELFARE OF ITS OCCUPANTS. THIS NOTICE IS POSTED (here the notice shall set forth the date eand hour such notice is posted). ALL PERSONS MUST VACATE THIS BUILDING NOT LATER THAN FORTY-EIGHT (48) HOURS AFTER THE TIME OF POSTING AND SHALL NOT RE-ENTER THE SAME UNTIL THE PARISH FINDS THAT THE BUILDING HAS BEEN REPAIRED SO AS TO BE IN COMPLIANCE WITH THE ORDINANCES OF THE PARISH OF JEFFERSON. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

If the hearing officer finds that the building is in such condition that it is dangerous for anyone to enter, the hearing officer shall order that the parish place a notice in a conspicuous place on such building, such notice to read in letters at least two and one-half (2½) inches high, the words:

> "THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING BY THE PARISH OF JEFFERSON. NO PERSON SHALL ENTER THIS BUILDING EXCEPT PERSONS AUTHORIZED BY THE OWNER WHO ENTER SOLELY FOR THE PURPOSE OF CORRECTING THE HAZARDOUS CONDITIONS THEREIN AND INSPECTORS OF JEFFERSON PARISH. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

The persons having an interest in the property shall be given a reasonable period of time in which to comply with the hearing officer's order, such period not to exceed thirty (30) days, unless, in the judgment and discretion of the hearing officer, it is determined that a greater period of time is necessary. The order shall state the date by which the action ordered must be completed, and state that the housing officer shall cause the building to be vacated, repaired and/or demolished if the persons having an interest in the property do not comply with the order. The order of the hearing officer shall be served on all persons having an interest in the property as provided in subsection (a) of Section 19-63.

A copy of the order of the hearing officer shall also be filed in the mortgage and conveyance records of the parish in which the land lies.

(g) If the persons having an interest in the property fail to comply with the order of the hearing officer within the time specified in the order for compliance, the housing officer shall cause such building to be vacated, repaired and/or demolished pursuant to the order of the hearing officer.

(h) If any instance in which an order has been issued pursuant to item (4) of subsection (f) above, that a building be secured and the owner complies with the order by securing the building, the hearing officer's case file shall, nevertheless, remain active for a period of three (3) years from the date of signature of the order. The housing officer may request that the hearing officer reconvene the hearing if he receives evidence that the building has not remained secured and is in contravention of subsection (a) of item (4) of section 19-61 of this Code. Upon notice to the owner, lienholders, occupants and other persons having an interest in the property, the hearing officer shall reconvene the hearing. If the hearing officer finds that the building remains a dangerous building notwithstanding the owner's efforts to secure it, he may issue a revised order that the building be demolished.

Sec. 19-64. Fees; costs; billing; payment; imposition of lien; addition of costs to ad valorem tax bill.

(a) The parish council hereby finds and declares that the general administrative expenses of inspecting buildings, locating owners, conducting hearings, issuing notices and orders, together

with all associated administrative functions, require the reasonable charge of five hundred dollars ($500.00) for each lot, adjacent lots under common ownership, or tract of land, and such minimum charge is hereby established and declared to be the charge for such administrative expenses to be assessed in each instance where the parish demolishes or contracts for the demolition of a building or buildings thereon. Notwithstanding any tabulation of recorded costs, a charge of five hundred dollars ($500.00) is hereby expressly stated to be a minimum charge. Further, the costs of demolishing the building or buildings either by the parish or by persons doing so under contract with the parish shall be separately calculated and assessed in each instance where the parish demolishes or causes the demolition of a building or buildings pursuant to this article.

The housing officer shall certify all administrave expenses and costs of demolishing a building or buildings by the parish or by persons doing so under contract with the parish, as a charge which shall be assessed the owners thereof. Such charge shall bear interest at the rate of ten (10) percent per annum until paid.

Provided, further, if an order has been issued pursuant to this article for the repair or demolition of a building or buildings and the parish has let a contract for demolition, and the building or buildings are subsequently repaired or demolished by the owners prior to completion of the contract let by the parish, the administrative expenses and all costs for cancellation of the contract shall be certified as a charge which shall be assessed as against the owners thereof. Such charges shall bear interest at the rate of ten (10) percent per annum until paid.

(b) At the completion of any work performed pursuant to this chapter, or preparation in anticipation thereof, the proprietary party and/or owner of the premises shall be sent a notice fulfilling the requirements provided in subsection (a) of section 19-63, itemizing the cost of the work in accordance with this article. The proprietary party and/or owner of the premises shall be given thirty (30) days from receipt thereof to make payment to the parish.

(c) In addition to the other provisions of this article, the parish is also authorized to have recorded in the mortgage office of the parish, a sworn statement showing the costs and expenses incurred for the work and the date, place or property on which the work was done, and the recordation of such sworn statement shall constitute a lien and privilege on the property and shall remain in full force and effect for the amount due in principle and interest, plus costs for filing the lien, and costs of course, if any, for collection until final payment has been made.

(d) In addition to the foregoing, the remedies available pursuant to sections 19-10 and 19-11 are also available.

Sec. 19-65. Execution of written release upon payment of charges or where lien placed on property through error; execution of written notice of compliance.

(a) Upon full payment of the charges assessed against any property, or in the event the lien is placed on the property through error, the sheriff is hereby authorized to execute, for and in behalf of the parish, a written release approved in each case by the legal department.

(b) Upon compliance with an order of the hearing officer to repair or demolish a building, the housing officer shall be and is hereby authorized to execute a written "Notice of Compliance" setting forth the date the notice of compliance is issued, the date the parish found the building to be repaired or demolished in compliance with the order; and if the building had not been demolished, whether or not the building is in such condition that it may be occupied.

(c) A fee shall be imposed for such release of lien provided hereunder in an amount to be fixed by the sheriff's office.

Sec. 19-66. Adding cost to ad valorem tax bill.

(a) In addition to any other provisions regarding collection of costs for work performed pursuant to this article, if payment is not received within six (6) months of the original invoice date, the parish may, at its option, proceed to adopt an ordinance levying the charges for such work plus fifteen (15) percent collection charges as an assessment to be added to the annual ad valorem tax bill of the premises or property involved.

(b) The sheriff effecting collection shall be reimbursed fifteen (15) percent of the amount of such charges actually collected from the proprietary party and/or owner of the premises or property involved.

Sec. 19-67. Violations; penalty for disregarding or removing notices or orders.

(a) The owner of any "dangerous building" who shall fail to comply with any order to repair, vacate, demolish or secure said building by any

person authorized by this article to give such order shall be guilty of a misdemeanor.

(b) The occupant or lessee in possession, who fails to comply with any order to vacate, and anyone having an interest in said building as shown by the mortgage and conveyance records of the parish where the land is located, and under a legal duty to repair, who fails to repair or secure said building in accordance with any order given as provided for in this article, shall be guilty of a misdemeanor.

(c) Any person removing any notice provided for in this article, shall be guilty of a misdemeanor.

(d) Each day that any violation of the above subsections continues shall constitute a separate offense.

(e) Violation of any of the above subsections shall be punishable as provided in section 1-10 of this Code.

Sec. 19-68. Emergencies.

(a) In cases where it reasonably appears that there is immediate danger to the health, life or safety of any person unless a "dangerous building", as defined herein, is immediately repaired vacated, demolished or secured, the housing officer shall report such facts to the director of the Department of Inspection and Code Enforcement. If the Director finds that there is in fact an immediate danger to the health, life or safety of any person unless the building is immediately repaired, vacated, demolished or secured, he shall cause the immediate repair, vacation, demolition or securing of such building, without any requirement for notice to the owner or interested parties in advance.

(b) Whenever the director causes a building to be repaired, vacated, demolished or secured pursuant to this section, he shall cause a notice, as described in subsection (f) of section 19-63, to be posted on the building.

Further, whenever the director causes a building to be repaired, vacated, demolished or secured pursuant to this section, he shall also cause notice to be given to the owners and lienholders of the building, all persons having possession of any portion thereof, and all other persons who may have an interest in the building that a hearing will be held concerning the orders issued in connection therewith, and whether the building constitutes a "dangerous building". The notice shall set forth the specific conditions which render the building a dangerous building within the standards set forth in section 19-61, the date, time and place of such hearing, that all persons having an interest in the building may appear in person and/or be represented by an attorney, and may present testimony and may cross-examine all witnesses. The said notice shall comply with the provisions set out in section 19-63; however, the hearing shall be held as soon as it is reasonably possible, but in no case later than ten (10) days after the director of the Department of Inspection and Code Enforcement has caused the building to be repaired, vacated, demolished or secured, unless all persons having either an ownership interest or a possessory interest in the building request a continuance of the hearing. All such hearings shall be held by an engineer employed by the Jefferson Parish Department of Engineering or another person designated by the director of the Department of Engineering in accordance with the provisions of section 19-63(d). At such

a hearing, the burden shall be upon the parish to show that there was an immediate danger to health, life or safety necessitating immediate action, and whether the building constitutes a dangerous building within the provisions of this article at the time of the hearing. After completion of the presentation of the testimony by all parties appearing, the hearing officer shall make written findings of fact as to whether or not the building was an immediate danger to health, life or safety necessitating the action taken by the director of the Department of Inspection and Code Enforcement, and whether the building was a dangerous building within the provisions of this article. If the hearing officer finds that there was an immediate danger to public health, life or safety that required the action that was taken, all administrative expenses and any cost of repair or demolition shall be calculated and assessed the owners of the building, and shall constitute a lien and privilege on the land on which the building stands or stood, which shall bear interest as provided in subsection (a) of section 19-64. If the hearing official finds that the building, at the time of the hearing, constitutes a dangerous building within the provisions of this article, he shall issue an order for its abatement as set out in subsection (f) of 19-63. The provisions of section 19-63 shall be applicable to any such order.

Sec. 19-69. Cleanup after demolition or removal of structures.

(a) Within thirty (30) days after any building or structure is demolished or removed from any lot or tract of land:

(1) All debris must be removed from the property.

(2) All holes or depressions in the ground must be filled to grade level.

(3) All lumber, pipes and all other building materials must be removed from the property or stored in such a manner that they are not a hazard to safety and do not create a condition where rats are likely to live or mosquitoes likely to breed.

(4) All pipes and conduits must be removed from above grade and must be removed or sealed below grade.

(5) All piers, pilings, steps and other appurtenances must be removed above grade.

(b) Each owner and each person having control over the property on which the building or structure stood prior to removal or demolition is individually responsible for completing such work or causing such work to be completed.

Sec. 19-70. Notice to complete work.

Whenever it shall come to the knowledge of the housing officer or a hearing officer designated pursuant to article V of this chapter that a building or structure has been demolished or removed and that the work required by this article has not been completed, the said housing officer or hearing officer shall cause written notice to be given as provided in subsection (a) of section 19-63 setting out the work required by this article which has not been completed. In such notice, the said housing officer shall order the owner of the property or person having control over the property to complete or cause to be completed all work required by this article within thirty (30) days of service of such notice.

Sec. 19-71. Penalty

Failure to comply with the requirements of section 19-70 or to comply with the order of the housing officer or a hearing officer given pursuant to this article shall be punishable as provided in section 1-10. Each day such work is not completed in violation of this article shall constitute a separate offense.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS 7 NAYS: None ABSENT: None

This ordinance was declared to be adopted on this the 8th day of August, 1990, to become effective ten (10) days thereafter.

On motion of Mr. DeViney, seconded by Mr. Ward, the following ordinance was offered:

SUMMARY NO. 15579 ORDINANCE NO. 18130 An ordinance amending Chapter 19, Article V, Sections 19-63 (d) and (f) of the Jefferson Parish Code of Ordinances to provide that hearings shall be held by architects as well as professional engineers, each registered pursuant to the laws of the State of Louisiana and selected by the Parish Council; and further to abolish the specific size requirements for notices to be placed on dangerous buildings.

THE JEFFERSON PARISH COUNCIL HEREBY ORDAINS:

SECTION 1. That the Code of Ordinances of Jefferson Parish, Louisiana, is hereby amended by amending Section 19-63(d) to read as follows:

(d) All hearings shall be held by engineering employed by the Parish of Jefferson, Department of Engineering, designated by the Director of Engineering or by professional architects and/or engineers registered pursuant to the laws of the

State of Louisiana and selected by the Parish Council. Such officials shall be referred to as the hearing officers provided; however, that no persons shall be selected to perform the duties of hearing officer under this section who have had prior knowledge of the conditions of such building, except such persons designated as hearing officers may, prior to the hearing, receive a copy of the notice given to the owners.

SECTION 2. That the Code of Ordinance of Jefferson Parish, Louisiana, is hereby amended by amending Section 19-63 (f) by deleting the size requirements for letters in notices to be placed in conspicuous places on buildings, to read as follows:

(f) After completion of the presentation of testimony by all parties appearing, the hearing officer shall make written findings of fact as to whether or not the buildings are dilapidated, substandard or unfit for human habitation and constitute a hazard to the health, safety or welfare of occupants and/or the citizens, and whether or not the buildings in question are dangerous within the standards set forth in Section 19-61.

If the hearing officer finds that any building is dilapidated, substandard or unfit for human habitation and that same constitutes a hazard to the health, safety or welfare of its occupants and/or the citizens, and that same is a dangerous building within the terms of Section 1961, he shall issue an order directing the owner, occupant and all other persons having an interest in said building as shown by the mortgage and conveyance records of the Parish where the land is located:

(1) That the building shall be vacated if same is occupied ad the hearing officer finds that

the building is in such condition as to make it dangerous to the health, safety or welfare of its occupants:

(2) That the building shall be either repaired or demolished (at the owner's option) if it can reasonably be brought into compliance by repair;

(3) That the building be demolished if it cannot reasonably be repaired; and

(4) If the building is unoccupied and the condition of the building is such that it may be brought into compliance by securing it from unauthorized entry, then the order may provide that it be so secured and be kept secured and may include or adopt written specifications that must be complied with in securing the building and the order may provide that the building be demolished if it is not secured in compliance therewith.

If the hearing officer finds that the building is substandard as above described and in such condition as to make same dangerous to the health, safety or welfare of its occupants or to the citizens, the hearing officer shall order that the Parish place a notice in a conspicuous place on such building; such notice to read the following words:

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING. OCCUPANCY OF THIS BUILDING IS PROHIBITED BY LAW AS SUCH OCCUPANCY IS DANGEROUS TO THE HEALTH, SAFETY AND WELFARE OF ITS OCCUPANTS. THIS NOTICE IS POSTED (here the notice shall set forth

the date and hour such notice is posted). ALL PERSONS MUST VACATE THIS BUILDING NOT LATER THAN FORTY-EIGHT (48) HOURS AFTER THE TIME OF POSTING AND SHALL NOT RE-ENTER THE SAME UNTIL THE PARISH FINDS THAT THE BUILDING HAS BEEN REPAIRED SO AS TO BE IN COMPLANCE WITH THE ORDINANCES OF THE PARISH OF JEFFERSON. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED.

If the hearing officer finds that the building is in such condition that it is dangerous for anyone to enter, the hearing officer shall order that the Parish place a notice in a conspicuous place on such building, such notice to read in the following words:

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING BY THE PARISH OF JEFFERSON. NO PERSON SHALL ENTER THIS BUILDING EXCEPT PERSONS AUTHORIZED BY THE OWNER WHO ENTER SOLELY FOR THE PURPOSE OF CORRECTING THE HAZARDOUS CONDITIONS THEREIN AND INSPECTORS OF JEFFERSON PARISH. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLSHED."

The persons having an interest in the property shall be given a reasonable period of time in which to comply with the hearing officer's order, such period not to exceed thirty (30) days, unless, in the judgment and discretion of

the hearing officer, it is determined that a greater period of time is necessary. The order shall state the date by which the action ordered must be completed, and state that the housing officer shall cause the building to be vacated, reparied and/or demolished if the persons having an interest in the property do no comply with the order. The order of the hearing officer shall be served on all persons having an interest in the property as provided in subsection (a) of Section 19-63.

A copy of the order of the hearing officer shall also be filed in the mortgage and conveyance records of the Parish in which the land lies.

SECTION 3. That the Code of Ordinances of Jefferson Parish, Louisiana, is hereby amended by amending Section 19-63 (h) to reflect reference to the proper preceding sections which were previously incorrectly stated, and to read as follows:

(h) If any instance is which an order has been issued pursuant to item (4) of subsection (f) above, that a building be secured and the owner complies with the order by securing the building, the hearing officer's case file shall, nevertheless, remain active for a period of three (3) years from the date of signature of the order. The housing officer may request that the hearing officer reconvene the hearing if he receives evidence that the building has not remained secured and is in contravention of subsection (1) of item (d) of section 19-61 of this Code. Upon notice to the owner, lienholders, occupants and other person having an interest in the property, the hearing officer shall reconvene the hearing. If the hearing officer finds that the building remains a dangerous building notwithstanding the

owner's efforts to secure it, he may issue a revised order that the building be demolished.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: 7 NAYS: None ABSENT: None

This ordinance was declared to be adopted on this the 7th day of November, 1990, to become effective ten (10) days thereafter.

42 U.S.C. § 1437

§ 1437. Declaration of policy

It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income and, consistent with the objectives of this chapter, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing progams. No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-income housing project.

42 U.S.C. § 1437f(a)

(a) Authorization for assistance payments

For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section. A public housing agency may contract to make assistance payments to itself (or any agency or instrumentality thereof) as the owner of dwelling units if such agency is subject to the same program requirements as are applied to other owners. In such cases, the Secretary may establish initial rents within applicable limits.

42 U.S.C. § 1439(d)(1)(A)(i)

(d) Allocation and reservation of housing assistance funds; purposes; prohibited reallocation of unutilized funds; enumerated uses for retained funds; competition for reservation and obligation of funds

(1)(A)(i) Except as provided by subparagraph (B), the Secretary shall allocate assistance referred to in sub-

section (a)(1) of this section the first time it is available for reservation on the basis of a formula that is contained in a regulation prescribed by the Secretary, and that is based on the relative needs of different States, areas, and communities, as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in the regulation. The Secretary may allocate assistance under the preceding sentence in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in subsection (a)(1) of this section in each fiscal year. In allocating assistance under this paragraph for each program of housing assistance under subsection (a)(1) of this section, the Secretary shall apply the formula, to the extent practicable, in a manner so that the assistance under the program is allocated according to the particular relative needs under the preceding sentence that are characteristic of and related to the particular type of assistance provided under the program. Assistance under section 202 of the Housing Act of 1959 [12 U.S.C.A. § 1701q] shall be allocated in a manner that ensures that awards of the assistance under such section are made for projects of sufficient size to accommodate facilities for supportive services appropriate to the needs of frail elderly residents. The preceding sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 1441a(c) of Title 12.

24 C.F.R. §251.301 (1989)

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closings, except those functions specified in paragraphs (b), (d) and (e) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information or certifications required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgagor, general contractor, consultant, and management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218;

(2) Environmental impact under the National Environmental Policy Act of 1969 and related laws and authorities set forth in 24 CFR Part 50;

(3) Equal opportunity considerations in the development and operation of the proposed project;

(4) The intergovernmental review procedures of 24 CFR Part 52. These procedures apply to cases involving 200 or more units in urbanized areas or 50 or more units in non-urbanized areas; and

(5) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(c) The lender must also submit any information required by the Commissioner for tracking or monitoring purposes.

(d) The Commissioner's authorized Departmental representative must endorse the Mortgage for coinsurance.

(e) The Commissioner retains responsibility for enforcement of labor standards and prevailing wage require-

ments set out in § 251.209. The Commissioner will perform all function under § 251.209 except that he may delegate to the lender information collection (e.g. payroll review and routine interviews) or other routine administration and enforcement functions, subject to monitoring by the Commissioner.

24 C.F.R. § 882.719 (1989)

§ 882.719 Initial Contract Rents.

Section 882.106. *Contract Rents,* does not apply.

(a) *Fair Market Rent and Agreement limitation.* (1) The initial Contact Rent plus any applicable Utility Allowance (Gross Rent) for any unit approved under this Subpart G shall not exceed the Section 8 Existing Housing Fair Market Rent applicable to the unit on the date the Agreement is executed, except as provided in this paragraph (a). (See also § 882.729(c), *Contract Rents in Agreement.*)

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph (a)(2) and under paragraph (a)(2) of § 882.106, Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum initial Gross Rents for all units of a given size of up to 20 percent above the applicable Fair Market

Rents within a designated municipality, county, or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in the maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the basis of a showing by the PHA that special circumstances apply to units of a given size limited to a specific neighborhood, and by reason of these circumstances the reasonable Gross Rents for such uints are as high as 20 percent above the applicable Fair Market Rents, and the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. Authorization under this paragraph (a)(4) shall be based upon substantially the same criteria as under paragraph (a)(3) of this section, except for the last sentence of that paragraph.

(b) *Rent reasonableness limitation.* Because the Fair Market Rents are established for a geographic area, within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit.

(1) The PHA shall certify for each unit it approves for project-based assistance under this Subpart G that the initial Contract Rent for the rehabilitated unit is:

(i) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, structure type, quality, amenities, facilities, and management and maintenance service of the unit; and

(ii) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(2) If a PHA proposes to project-base assistance for fifty or more units, the PHA must obtain HUD Field Office approval of the Contract Rents before executing the Agreement.

(3) For a rent-controlled unit, comparable units must be units that are rent-controlled; for a unit that is not subject to rent control, comparable units must be units that are not rent-controlled.

(c) *Congregate housing.* (1) The Fair Market Rent for each congregate housing uint shall be the same as for a 0-bedroom unit, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining, and sanitary facilities and the provision of special amenities, maintenance or management services, or a combination of both.

(d) *Independent Group Residences* (1) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(2) A Resident Assistance who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining

the Total Tenant Payment, the Tenant Rent, or the Family's income eligibility.

(3) In determining the reasonableness of the rents, consideration shall be given to the presence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

(e) *Single room occupancy units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraphs (a)(3) or (a)(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the initial rent exceed 75 percent of 120 percent i.e. 90 percent of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

(f) *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

[Filed Jun. 15, 1992]

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

Number: 434-842
VICARI CONTRACTORS, INC.

versus

PARISH OF JEFFERSON

PETITION FOR DAMAGES FOR WRONGFUL DEMOLITION OF PRIVATE PROPERTY

The petition of VICARI CONTRACTORS, INC., a Louisiana Corporation domiciled in the Parish of Jefferson, respectfully represents:

I.

The Parish of Jefferson, a political subdivision of the State of Louisiana, authorized to sue and be sued, is made a defendant herein, and is liable unto petitioner for the following:

II.

Petitioner was the owner of Buildings 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, and 26 on Lot 15-B, Square C, Westside Terrace Subdivision, in this parish.

III.

The buildings identified in the preceding paragraph were wrongfully and negligently demolished by the de-

fendant, the Parish of Jefferson; however, petitioner remains as the owner of the land upon which the buildings had been situated.

IV.

Pursuant to Section 19-60, et seq., or other applicable section of the Code of Ordinances of the Parish of Jefferson, proceedings were instituted against petitioner alleging that the above mentioned buildings were dangerous and/or they constituted a hazard to the health, welfare or safety of their occupants and/or the citizens of this parish, and attempting to obtain an order requiring petitioner to have the above mentioned buildings vacated and repaired, demolished or secured.

V.

On May 24, 1991, pursuant to Chapter 19 of the code of Ordinances, a hearing was held before a Hearing Officer to determine whether the buildings were dangerous as defined in Section 19-61, and if so, whether or not such building(s) must be vacated, secured and/or repaired or demolished.

VI.

As a result of the aforementioned hearing, on May 24, 1991, orders were issued directing petitioner to take spefic actions with regard to each building mentioned above, copies of which are attached hereto as Exhibit P-1 in globo and incorporated herein by reference and made a part hereof as if copied herein in extenso.

VII.

The findings of the Hearing Officer were such that the plaintiff was not required to demolish the buildings and the orders of the Hearing Officer did not require him to do so.

VIII.

The findings of the Hearing Officer identified conditions which could reasonably be corrected without de-

molishing the buildings and, the Hearing Officer did not require the plaintiff to demolish the buildings.

IX.

At the time of purchase of the above mentioned buildings, petitioner had a commitment from a local financial institution to loan the funds to purchase the property and the funds to renovate and repair the buildings.

X.

The property identified in paragraph II above was purchased by petitioner to participate in a guaranteed rent program for low income families, which program was overseen by the United States Department of Housing and Urban Development (hereinafter referred to as HUD) and required HUD's final approval of the rent which the Jefferson Parish Housing Authority was going to pay to petitioner.

XI.

The actual agreement between petitioner and the Jefferson Parish Housing Authority could not be signed until after HUD approved the rent schedule, which agreement was finally signed on May 30, 1991.

XII.

Defendant, the Parish of Jefferson, had actual knowledge that the Housing Authority of Jefferson Parish had, on October 19, 1989 selected seventy-seven (77) units of petitioner's Section 8 Project Based Proposal for assistance.

XIII.

The selected seventy-seven (77) units of petitioner's Section 8 Project Based Proposal for assistance were all part of the property above described in paragraph II and, which were wrongfully and negligently demolished by the defendant, the Parish of Jefferson.

XIV.

Defendant, the Parish of Jefferson, had actual knowledge of the conditions of the buildings subject of the order of the Hearing Officer on May 21, 1991 for the entire period of time prior thereto that petitioner owned the buildings which period of petitioner's ownership began on December 29, 1989.

XV.

Defendant, the Parish of Jefferson, acquiesced in the condition of the buildings during plaintiff's ownership from December 29, 1989 until May 21, 1991.

XVI.

On information and belief defendant, the Parish of Jefferson, had actual knowledge of the condition of the buildings purchased by the plaintiff on December 29, 1989 for a considerable time prior thereto and made no demands upon prior owners that the buildings be demolished.

XVII.

Petitioner was notified by defendant on July 25th, 1991 that the work order to demolish all of the buildings mentioned above except Building 14 will be issued on Friday, July 26th, 1991, and demolition will begin on Monday, July 29th, 1991.

XVIII.

The notification of demolition served upon petitioner as described in the preceding paragraph was issued with the full and complete knowledge of the defendant, the Parish of Jefferson, that remedial measures were readily available and could have been accomplished easily at a cost of $25,000.00 or less.

XIX.

Defendant instead chose to demolish plaintiff's buildings for triple the cost of remedial measures in an amount exceeding $75,000.00.

XX.

Defendant's decision to demolish, as well as the actual demolition, was an act of negligence for the reason that defendant's conduct exceeded that which was required to remedy the conditions found to exist by defendant's Hearing Officer.

XXI.

The negligent conduct of the defendant, the Parish of Jefferson, in demolishing plaintiff's above described buildings was not for the purpose of enforcing its ordinance, but rather was for the purpose of depriving the plaintiff of his vested property rights and participation in Section 8 Project Based Housing Assistance Payment Contract awarded to him by the Housing Authority of Jefferson Parish.

XXII.

Petitioner shows that at the time it purchased the property in question, there were many other buildings in the area which were in a worse state of disrepair than the buildings concerned herein, and those buildings are still standing. Further, petitioner shows that these other buildings and properties are violating parish ordinances to the same degree or worse than petitioner's buildings.

XXIII.

Petitioner shows that there was a fence around its buildings which it was maintaining as best it could and as best as it could be maintained under the circumstances, and it kept the grass cut. Most of the other property owners were not even doing this much, yet petitioner's buildings were to be the first, or among the first to be demolished.

XXIV.

Petitioner sought to protect his vested property rights and Section 8 Project Based Housing Assistance Payments Contract by filing a petition for writ of injunction on July 29, 1991 in the matter of Vicari Contractors, Inc. versus Parish of Jefferson, Number 420-579, 24th Judicial District Court, Parish of Jefferson.

XXV.

The petition referenced in the preceding paragraph resulted in a consent judgment intended to permit the defendant to enforc is ordinanc according o law.

XXVI.

The provisions of the ordinance, the decision of defendant's Hearing Officer and the consent judgment provide that the penalty of demolition is permissive and not mandatory.

XXVII.

Additionally, plaintiff entered into the consent judgment because he knew that at the time of the hearing he had a commitment for the necessary funds to proceed with his project and, had his witness present at the hearing to testify to establish that fact.

XXVIII.

Defendant committed further acts of negligence against plaintiff by interfering with plaintiff's Section 8 Project Based Assistance Payments Contract immediately following plaintiff's entry into the consent judgment with defendant by the actions of its officers or employees in approaching plaintiff's above described witness who was also representing plaintiff's source of financing, and delivering to that witness a letter stating that the number of plaintiff's units selected for Section 8 Project Based Assistance Payments Contract was limited to 15.

XXIX.

Defendant's officers and employees knew or should have known that the letter described in the preceding paragraph was incorrect and, had no reason to present the letter to plaintiff's financing representative other than to cause that representative to report to his principal with that information and cause plaintiff to lose the financing critical for compliance with the consent judgment that plaintiff had entered into, in good faith, with the defendant.

XXX.

As a result of the presentation of the letter by defendant's officers and employees as described in the immediately preceding paragraphs, plaintiff's ability to obtain financing within the limitations of the consent judgment were destroyed.

XXXI.

As a result of the negligent conduct of the defendant, through its officers and employees as herein above particularly described, plaintiff has suffered the following damages:

1) Loss of income tax credits;

2) Loss of profits from rental income;

3) Loss of assets;

4) Emotional distress to its officers, directors, and shareholders;

5) Loss of business opportunities and profits therefrom.

WHEREFORE, petitioner prays that after due proceedings there be judgment herein in favor of petitioner, Vicari Contractors, Inc., and against defendant, the Parish of Jefferson, for such damages as are reasonable in the premises, with legal interest thereon from date of judicial demand, and for all costs of this suit.

/s/ Stephen J. Caire
STEPHEN J. CAIRE
Attorney at Law
4508 Kawanee Avenue
Metairie, LA 70002
(504) 892-9295

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

Number 420-579
Division "A"

VICARI CONTRACTORS, INC.

versus

THE PARISH OF JEFFERSON

Proceedings in the above-numbered and entitled cause taken in open court on August 2, 1991, before the Honorable G. Thomas Porteous, Jr., Judge presiding.

PROCEEDINGS

MR. BUTLER: Perrin C. Butler, Jr.

MR. DUNN: Duane D. Dunn, representing Vicari Contractors, Incorporated.

We have a consent judgment that we're going to dictate into the record here today in case number 420-579.

This is regarding buildings 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, and 26 on lot 15-B, as in boy, Square C, as in Charlie, Westside Terrace Subdivision, Harvey, Jefferson Parish, Louisiana. When we refer to the buildings in this particular consent judgment those are the buildings that we will be referring to.

All openings except doors with deadbolts shall be covered in their entirety with plywood and screws, pywood secured by screws as follows. The screws shall be three

inches in length by one-quarter inch in diameter spaced at least one foot apart around the entire perimeter of the plywood. The plywood shall be five-eighths inches CDX grade plywood on all ground floor openings that are required herein to be covered and one-half inch CDX grade plywood on all second floor openings that are required herein to be covered.

The plywood covering all openings that are required to be covered herein is to remain in place at all times while the building is vacant and renovations are not completed as to that building except during renovation and/or clean up work. Any plywood opening covering removed during renovation and/or clean up work shall be reinstated at the daily completion, reinstaled, excuse me, at the daily completion of work. All balconies, stairs, gutters, siding, supporting posts or other exterior portions of the buildings in a condition such that they are likely to fall and injure someone must be secured, repaired, or removed so as to satisfy the Jefferson Parish dangerous building abatement inspector by 4:30 p.m. on the 24th day of August 1991.

All debris consisting of garbage, waste and combustable materials shall be removed from the interior of these buildings by 4:30 p.m. on the 24th day of August 1991.

A representative of the owner shall be present on the property between the hours of 8:30 a.m. and 3:30 p.m. on the 26th day of August 1991 to allow inspection of the property by the Jefferson Parish dangerous building abatement inspector.

The owner shall be begin renovation of any or all of the buildings on the site by noon on the third day of September 1991 and continue with renovation until all buildings are completed, until all buildings are completely renovated. By the end of the sixth day of August 1991 the Parish of Jefferson shall cancel the inscription of all of the orders rendered by its hearing officer on May 24, 1991 concerning these buildings which are recorded in the mortgage and/or conveyance records of the Parish

of Jefferson against any or all of these buildings with the owner to bear the costs of these cancellations.

The owner consents that upon his failure to comply with the provisions of this order for any reason whatsoever save for an Act of Force Majeure the buildings may be totally and completely demolished by the Parish of Jefferson or its representative without further notice to the owner with the owner to bear all costs of demolishion including reasonable administrative expenses.

Now, finally, although this will not be part of the actual terms of the judgment the parties are agreeing here today that there may be additional provisions that needed to be added to this judgment which were not thought of. That we have attempted to satisfy all requirements on both sides but we have been at this for some two, two and a half hours and may think of additional matters that may need to be addressed later.

The parties therefore agree that additional provisions may be added to this judgment by written mutual consent of the parties.

We further agree that there needs to be some method of inspecting the buildings and the work being performed by the owner to determine whether or not the work being performed satisfies the requirements of this judgment and, if not, that the owner be given notice that the provisions of this judgment are not satisfied so that he can take steps to rectify any inadequacies or deficiencies in the work he's performed. This is so from the owner's standpoint because these determinations are to be made by the Parish, and the owner suggests and I believe the Parish agrees that it would only be reasonable then if the Parish is making the determination that he be given an opportunity or he be given notice that he is not satisfied with the judgment, he has not complied with the provisions as determined by the Parish's representative and that therefore he be able to or be in a position to rectify the e-ficiences.

MR. BUTLER: Is there any way to play back that last statement he said? I want to make sure I understand what he said.

(Whereupon the last statement was read back)

MR. BUTLER: Do you want to add in there prior to the cut off dates?

MR. DUNN: That he be in a position to rectify the deficiencies since he would have knowledge of the deficiencies whereas he would not be able to rectify them if he did not have knowledge that the Parish was not satisfied with the work. As the Parish's request the consultation with the inspectors or representatives of the Parish will meet with the owner or his representative prior to the deadlines or cutoff dates set forth in this judgment.

We also agree that, the owner and the Parish agree that in the very near future upon the owner's request a representative of the Parish will meet with the owner or his representative and clean out specific areas of concern that the Parish has and in particular specific actions that must be taken to remedy the specific defects or deficiencies of the property.

Do you want to state your agreement so that?

MR. BUTLER: Yes. I would also like to state that I do agree to what has been read into the record. At this time I have nothing further.

MR. DUNN: The judgment will be prepared by me and will be submitted early next week.

BEST AVAILABLE COPY

JEFFERSON PARISH DEPARTMENT OF INSPECTION AND CODE ENFORCEMENT

BUILDING PERMIT

PLACARD NO. GW-280-C

Address 1040 E. MARY POPPINS.

Construction INT. & EXT. GEN REPAIR

and Occupanc TO EXIST APT. COMPLEX

31 JULY , 1991

SQ. LOT

SEPARATE PERMITS MUST BE OBTAINED FOR: ELECTRICAL, MECHANICAL OR PLUMBING INSTALLATIONS.

PETE SCHNECKENBURGER
CHIEF BUILDING INSPECTOR

This Sign Must Be Conspicuously Posted Continuously During Construction

On motion of Mr. Lawson, seconded by Mr. Evans, the following resolution was offered:

RESOLUTION NO. 67874

A resolution requesting the U.S. Department of Housing and Urban Development to expedite the approval of all pending Project Base Section 8 Housing Program Certificate applications.

WHEREAS, the Jefferson Parish Housing Autority has selected owners of 180 units of rental property to apply for the Project Based Section 8 Housing Certificate Program; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) must certify that the rents to be charged for the units renovated under this program are consistent with fair market value rents; and

WHEREAS, HUD has not yet made this determination which has delayed renovation of the rental units and the placement of qualified tenants in the units;

NOW, THEREFORE, BE IT RESOLVED by the Jefferson Parish Council of Jefferson Parish, Louisiana, acting as governing authority of said Parish:

SECTION 1. That this Council hereby requests the U.S. Department of Housing and Urban Development to expedite the approval of all pending Project Based Section 8 Housing Program Certificate applications.

The foregoing resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: 7 NAYS: None ABSENT: None

The resolution was declared to be adopted on this the 28th day of November, 1990.

AMG/na-November 14, 1990

[Logo]

JEFFERSON PARISH
LOUISIANA
OFFICE OF PARISH PRESIDENT

MICHAEL J. YENNI
Parish President

December 14, 1990

Mr. Joe Brinkley, Acting Manager
U.S. Department of Housing and Urban Development
New Orleans Office
Fisk Federal Building—Suite 3100
1661 Canal St.
New Orleans, Louisiana 70112-2887

Re: Local Strategy-Jefferson Parish
Apple Trace II Properties
Section 8 Project Based Selection

Dear Mr. Brinkley:

Last week I was asked by Barry Bordelon, Chairman of the Housing Authority of the Parish of Jefferson, to outline the Local Strategy of Jefferson Parish as it relates to the preservation or restoration of neighborhoods immediate to the site experiencing significant private investment that is demonstratively changing the economic character of the area, namely, Apple Trace II Properties located between Mary Poppins East and Mary Poppins West and bounded by North Mary Poppins on the North and Pygmalion Drive on the South.

Chairman Bordelon additionally advised me that a significant proportion of minority households had been successful in finding units to lease in non-minority areas under the Section 8 Certificate and Housing Voucher Programs and that this area was picked overwhelmingly by the Housing Authority of the Parish of Jefferson to participate in the Section 8 Project Based Program. The Housing Authority of the Parish of Jefferson's assessment of the

placing of the Project in this area was one that was taken with much care and thought concluding that the above site was very accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities. In fact, it appears that the above site is superior to many other sites in Jefferson parish in that all of the above amenities outlined can be accessed by these residents without motorized transportation.

One of the most important areas that I would like to address is in the area of code enforcement. Our strategy is one that is to concentrate upon removing all substandard dwellings and the removing of any undesirable conditions that would be detrimental to family life. I have enclosed a Newspaper notice that is giving property owners in this area notice of a hearing pursuant to Jefferson Parish Ordinance No. 1805, thereby seeking to have the buildings located thereon either vacated and repaired, demolished or secured as their conditions may warrant. This notice is dated December 4, 1990 and is just a prelude to a number of hearings that will be held. In other words, we are serious about cleaning up these areas of Jefferson Parish that have fallen below acceptability.

Another area that Chairman Bordelon advises me that you are most interested in are the conditions of streets in this area. I have also enclosed a letter addressed to Chairman Bordelon from H.A. Schomaker, Director-Streets, Jefferson Parish Louisiana Department of Public Works that the above project is bounded by streets that are of concrete construction and are rated from 27 to 32 out of a possible 40 points. Mr. Schomaker states that is is his opinion that the streets indicated above will serve many years without any restoration work unless they are abused by off-road equipment and excessive loads.

An additional area of concern raised by Chairman Bordelon dealt with law enforcement in the neighborhood surrounding the Apple Trace II project. I can assure you that my office and the Jefferson Parish Council are com-

mitted to supporting adequate law enforcement in this area. Statistics provided to my office show a thirteen percent (13%) decline in police calls in this neighborhood. Additinal law enforcement officers are being provided by the area landlords on a private security basis and as you are aware the developer of the Apple Trace II project has agreed to participate in this neighborhood law enforcement effort. I sincerely believe that if all the parties concerned continue to work together the crime rate can be reduced even further.

To sum up the above, this project is very necessary to meet the needs of the low income people in this area who would like to live there and it is an integral part of our overall strategy for the restoration of this very strategic neighborhood.

Sincerely,

/s/ Michael J. Yenni
MICHAEL J. YENNI
Parish President

MJY/jb

[Logo]

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
New Orleans, Region VI
1661 Canal Street
New Orleans, Louisiana 70112

August 22, 1991

Mr. Barry Bordelon, Chairman
Jefferson Parish Housing Authority
1718 Betty Street
Marrero, LA 70072

Dear Mr. Bordelon:

Re: Approval of Apple Trace II Apartments for Project Based Section 8 Funding

After further review of the documents advanced by your PHA regarding your selection of developer Vicari Contractors, Inc. to renovate 77 units known as Apple Trace II under the HUD approved project based Section 8 program, we have decided that the project may immediately go forward. This means, among other things, that: an AGREEMENT TO ENTER INTO A HOUSING ASSISTED PAYMENTS CONTRACT (AHAP) is authorized to be executed and construction may start after receipt of the appropriate approvals from Jefferson Parish.

After successful completion of rehabilitation, you should inspect the units to assure that they meet Housing Quality Standards and that more than $1,000 per unit was expended. At that point, you may execute a Housing Assisted Payment (HAP) Contract. This would allow payment to the developer of the Section 8 assistance on behalf of the occupants of the 77 units based on the following rents:

1 BR/1 bath (771 sq. ft.) $300

2 BR/2 Baths (936 sq. ft.) $360

3 BR/2 baths (1,221 sq. ft) $405

To promote greater choice of housing opportunity to eligible families (even as a Section 8 project-based assisted project) you are urged to establish a strong marketing plan. Further, we suggest that there be continued, visible evidence of progress and stability in the neighborhood. At a minimum, security measures (public or private) to prevent vandalism to properties should be implemented immediately. In addition, special efforts or letters of commitment to the neighborhood from Parish officials, particularly from the Sheriff, Fire and Sanitation Department Heads should be secured to ensure these ends.

Best wishes for successful completion of this important project.

Sincerely,

/s/ Robert J. Vasquez
ROBERT J. VASQUEZ
Manager

cc:
Pete Vicari, Developer
Jack Brown, Attorney Advisor
Paul Connick, Chief Administrative Assistant
Jefferson Parish

Supreme Court, U.S.
FILED
JUN 22 1998
CLERK

NO. 97-1878

In the Supreme Court of the United States

OCTOBER TERM, 1997

VICARI CONTRACTORS, INC.
Petitioner

VERSUS

PARISH OF JEFFERSON
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIFTH CIRCUIT, STATE OF LOUISIANA

A BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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88 pp

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The Respondent the Parish of Jefferson, in accordance with Sup. Ct. R. 15, submits this Brief in Opposition to the Petition for Writ of Certiorari filed by Vicari Contractors, Inc. In accordance with Sup. Ct. R. 15, ¶2, Respondent calls the Court's attention to a misstatement of fact in the Petition that bears on what issues are properly before the Court if certiorari were granted.

I. *THE COURT LACKS JURISDICTION*

Petitioner claims it raised *federal questions* in the appellate courts of the State of Louisiana. Petition for a Writ of Certiorari at 3. Petitioner claims jurisdiction is invoked pursuant to 28 U.S.C.A. §1257(a), which provides that final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari where the validity of a statute of any State is drawn into question on the grounds of its being repugnant to Constitution, treaties and laws of the United States, or where any title, right, privilege, or immunity is specially seet up or claimed under the constitution or Statutes of the United States. Petition for a Writ of Certiorari at 2. *Petitioner did not raise any federal claims in state court proceedings.*

Respondent attaches as an appendix Petitioner's Application for a Writ of Certiorari to the Louisiana Supreme Court. (A1-A48). Petitioner did not cite the Constitu-

tion, treaties or laws of the United States, or any right, privilege, or immunity under the United States Constitution or laws, as supportive of its position in the case. (A1-A48). The brief filed by Petitioner on appeal to the state Fifth Circuit was an exact duplicate of the writ application filed in the Louisiana Supreme Court. Further, at oral argument in the state Fifth Circuit Petitioner requested that the court *disregard* Petitioner's brief and consider "fairness and equity". *No federal questions were addressed by the state courts because Petitioner did not raise federal questions in the state courts.* The first reference in this case to the United States Constitution, Statutes, and Codes is the Petition for a Writ of Certiorari.

Petitioner claims it raised federal questions through "fact pleadings", citing paragraphs of its Petition for Damages. Petition for a Writ of Certiorari at 3. The cited paragraphs reflect no reference which could in the most liberal interpretation be said to raise with fair precision any federal claims. The allegations of the petition were insufficient to inform the state courts that they were presented with a federal claim. Moreover, on the first day of trial of this matter, Petitioner entered the following stipulation on the record:

> All claims stated in the Petitions against the Parish of Jefferson arising prior to the entering into the Consent Judgment on August 2, 1991 are dismissed and the Petition is amended to state that the action is for the wrongful enforcement of the agreement which was reached in open court on August 2, 1991. . .

Under Petitioner's stipulation the *only issue addressed*

was whether the Parish wrongfully enforced a consent judgment after Petitioner allegedly complied with its terms.

Federal preemption and supremacy clause issues now raised by Petitioner were neither raised nor addressed in the state courts. This Court has consistently held that, with very rare exceptions, in reviewing state court judgments it will not consider federal claims unless the federal claims were either addressed by or properly presented to the state court that rendered the decision to be reviewed. *Adams v. Robertson,* 117 S.Ct. 1028, 1029 (1997). When the state court is silent on a federal question, the Court assumes the issue is not properly presented, and the aggrieved party bears the burden of defeating that presumption. Id. at 1029. Petitioner concedes that the Louisiana state courts did not consider or pass on federal questions. Petition for a Writ of Certiorari at 3. Petitioner does not, *indeed cannot,* show that the issues were properly presented to the state courts.

The state court briefs and record show that federal questions were not presented in the state courts. (A1-A48). Petitioner does not demonstrate compliance with state rules for raising federal claims before the state courts, nor has Petitioner explained why the failure to comply with those rules would not be an adequate and independent ground for the state court to disregard the claims. *Adams,* 117 S.Ct. at 1030. Petitioner does not establish that it presented federal claims "with fair precision and in due time". Id. at 1030. The federal claims were not asserted until the Petition for Writ of Certiorari. Under the circumstances it was reasonable for the state courts to conclude no federal claims were before them. Id. at 1031.

Because petitioner failed to carry its burden of showing federal claims now raised were properly presented to the state courts, this Court cannot reach the question presented. Id. at 1028. This Court need not decide whether the requirement that a federal claim be addressed or properly presented in state court is jurisdictional or prudential, because even treating the rule as prudential, the circumstances here justify no exception. Id. at 1031. Nevertheless, Respondent respectfully suggests that, in accordance with *Webb v. Webb,* 451 US 493, 496, 101 S.Ct. 1889, 1991, 68 L.Ed. 2d 392 (1981), the Court is without jurisdiction in this case because federal questions were not raised in the state court proceedings.

II. *WRIT GRANT CONSIDERATIONS ARE NOT PRESENT*

Sup. Ct. R. 10 sets forth criteria which indicate the character of reasons the Court considers in deciding whether to grant certiorari: a) the existence of conflicting decisions between United States courts of appeals on the same important matter; b) the state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals; c) a state court or United States court of appeals has decided an important question of federal law that has not been but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

None of the Sup. Ct. R. 10 writ grant considerations exist in the present case. No conflicting decisions by United States courts of appeals are cited. The state courts have not decided *any* questions of federal law. Petitioner does not point

out any question of federal law that has not been but should be settled by this Court. In addition to the absence of jurisdiction, the absence of writ grant considerations dictates that this Court deny the Petition for a Writ of Certiorari.

III. *THE CONTROVERSY DOES NOT ARISE UNDER FEDERAL LAW*

Petitioner claims this case "concerns the Section 8 Certificate Program, . . . established pursuant to Section 8 of the National Housing Act of 1937". Petition for Writ of Certiorari at 3. This is a misstatement of fact. By Petitioner's own stipulation the only issue in the trial court was whether Respondent wrongfully enforced a consent judment because Petitioner allegedly complied with its terms. A recitation of facts with reference to *record* evidence compellingly demonstrates the National Housing Act is not implicated.

In 1989 Petitioner purchased twelve vacant four-plex buildings on Mary Poppins Drive in Harvey, Louisiana, an area notorious for drug activity in abandoned and blighted buildings. The Sheriff's Office responded to *hundreds* of service calls at the buildings. The buildings were in such poor condition that $1.5 million dollars worth of renovations were needed. Many units had fire damage and were missing doors and windows. Petitioner was unable to secure financing for renovations. In April 1991 the property remained in a derelict condition.

The Respondent enacted a Dangerous Building Ordinance to protect the health, safety and welfare of the general public by establishing a requirement that structures which were vacant, unsecured, and unrepaired be secured

and repaired by the owner, at the risk of demolition if the owner failed to comply. Petition for a Writ of Certiorari, 22a-47a. Economic decline had caused the incidents of vacant, open structures to increase significantly. Id. at 23a. Derelicts, criminals, and vagrants habitually used such structures as hideouts. Id. at 22a. The respondent was compelled to provide a means of forcing owners to abate the hazards or to bear costs incurred by the Respondent in abating the hazards.

In April 1991 the Respondent investigated complaints with respect to Petitoner's buildings. The buildings were open to entry by vagrants; exteriors and interiors had fire damage; and junk, trash and debris were scattered through the interiors. Photographs graphically depict the dilapidated state of the buildings. The buildings were inspected by inspector Thibodaux of Harvey Volunteer Fire Co. No. 2. Inspector Thibodaux determined the buildings were fire hazards because they were full of trash, open to entry by vandals and vagrants, and falling down, conditions conducive to arson fires. There had in fact been a series of fires in the buildings.

An administrative hearing took place with respect to the condition of the buildings. Peter G. Vicari was present on behalf of Petitioner. The Hearing Officer determined the buildings were dilapidated, substandard, unfit for human habitation, constituted a hazard to health, safety and welfare of the citizens, and were "dangerous buildings". Orders were issued giving Petitioner thirty (30) days to secure the buildings and obtain a permit and begin repairs, or obtain a demolition permit. The orders were served on Petitioner, who acknowledged receipt of the orders and advised that "we should start a total renovation project within the next

thirty days".

Petitioner failed to take action as promised. On July 25, 1991 Respondent notified Petitioner that demolition would commence the next day. Petitioner filed a Petition for a Writ of injunction to enjoin demolition. After appearing in court for a hearing on a preliminary injunction *Petitioner's attorney recited the terms of a settlement on the record.* Petitioner agreed that by August 24, 1991 it would secure all openings with plywood and remove all debris from the buildings. A representative of Petitioner was to be present on August 26, 1991 to allow inspection. Renovations were to begin by September 3, 1991. *Petitioner consented and agreed that upon its failure to comply with the provisions of the agreement the buildings would be demolished by the Respondent without further notice.* Petitioner did nothing to comply with the settlement agreement. Demolition commenced the week of September 25, 1991 and continued through February 4, 1992. Petitioner filed suit for damages four months later.

Petitioner had entered into an "Agreement to Enter into a Housing Assistance Payment Contract" (AHAP) with the Housing Authority of Jefferson Parish. (A49-A66). The effective date of the Agreement was May 30, 1991. (A49). The AHAP provided that if Petitioner completed rehabilitation of units in accordance with a work write-up, a Housing Assistance Program (HAP) contract would be executed. (A49). *Commencement of the work was to be no later than July 30, 1991.* (A50). Petitioner could not obtain financing for the renovations and thus was unable to commence renovations as required under the AHAP. The AHAP was cancelled by the Housing Authority of Jefferson Parish.

Petitioner filed a claim against HUD under the Tort Claims Act alleging the property was demolished as a result of HUD's negligence and unreasonable delays in approving project based Section 8 funding. Petitioner filed a Complaint against HUD in the United States District Court for the Eastern District of Louisiana wherein it alleged the buildings were demolished as a result of HUD's negligence in approving proposed rent schedules for the project. Petitioner's claims against HUD were dismissed on motion for summary judgment. The Fifth Circuit affirmed the dismissal of the claims against HUD. Claims with respect to the AHAP were not presented in the state court proceedings against Respondent and are not properly before this Court.

Even if raised in *this* litigation, the claims asserated by Petitioner do not involve a right or remedy created by federal law. *1610 Corporation v. Kemp,* 753 F. Supp. 1026, 1031 (D.Mass. 1991), held that the fact that an AHAP is subject to federal regulation or involves preprinted forms prescribed by HUD does not establish that interpretation and aspects of performance of the AHAP are governed by federal law or that controversy over its terms arises under federal law, such that there would be federal question jurisdiction. Although federal statutes and regulations may be implicated to some extent, the claims at the core require only an interpretation of contract rights. Id. There is no significant federal interest or policy in conflict with state law, nor is there a necessity to provide for federal uniformity in the interpretation of such contract rights. Id. *Interpretation of contractual obligations under an AHAP are governed by state law.* Id. Federal courts have no subject matter jurisdiction to hear such claims. Id.

This case did not involve the National Housing Act. Even if it had, the National Housing Act does not preempt local laws enacted for the protection of the health, safety, and welfare of the general public.

IV. *PREEMPTION UNDER THE SUPREMACY CLAUSE*

Petitioner suggests HUD's involvement in approving proposed rents for Petitioners project *once renovations were complete* brought the project under the auspices of the National Housing Act, and therefore state and local laws and ordinances *which in any way impact the project* are preempted by the Supremacy Clause of the United States Constitution. Petition for Writ of Certiorari at 12. Petitioner suggests local governing authorities have no right to enforce ordinances enacted for the protection of the public health, safety, and welfare as against Petitioner's property, because its *potential* contract with a local housing authority to provide Section 8 project based housing is a shield against compliance with health, safety, and sanitation codes. Id. This position is untenable.

The Supreme court has laid out a well-worn path in preemption cases. *California v. ARC America, Corp.*, ____ U.S. ____, ____, 109 S.Ct. 1661, 1665, 104 L.Ed. 2d 86 (1989). It must first be determined whether Congress stated expressly its intent to supercede state law through the enactment of the statute in question. Even in the absence of express preemptive language, Congress may legislate in a given area so comprehensively that federal law occupies an entire field, leaving no room for state regulation. *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n.*, 461 U.S. 190, 204, 103 S.Ct. 1713,

1722, 75 L.Ed. 2d 752 (1983). Even when Congress does not occupy an entire field, state law is prempted when it actually conflicts with federal law. Such a conflict may occur when compliance with both state and federal law is impossible, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes or object of Congress. *Hines v. Davidowitz,* 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 2d 581 (1941). The critical question is whether Congress intended that federal regulation supercede state law. *Louisiana Public Service Comm'n v. Federal Communications Comm'n.,* 476 U.S. 355, 369, 106 S.Ct. 1890, 1899, 90 L.Ed. 2d 369 (1986).

Preemption may not be inferred from every Congressional enactment that overlaps state regulation. Courts must start with the assumption that the historic police powers of the states are not to be superceded by a federal statute unless that was the clear and manifest purpose of Congress. *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 2d 1447 (1947). The presumption against preemption applies to state or local regulations on matters of health and safety. *Hillsborough County v. Automated Medical Laboratories, Inc.,* 471 U.S. 707, 715, 105 S.Ct. 2371, 2376, 85 L.Ed. 2d 714 (1985). Only *actual* conflicts between state and fedearal law are of concern; the existence of a hypothetical or potential conflict is insufficient to warrant preemption. *Rice v. Norman Williams Co.,* 458 U.S. 654, 659, 102 S.Ct. 3294, 3299, 73 L.Ed. 2d 1042 (1982).

V. *THE HOUSING ACT OF 1937 DOES NOT PREEMPT LOCAL BUILDING ORDINANCES*

The United States Housing Act of 1937, 50 Stat. 888,

as amended, 42 U.S.C. §1401 et seq., established a federal housing agency authorized to make loans and grants to state agencies for slum clearance and low rent housing projects. *James v. Valtierra,* 402 US 137, 138, 91 S.Ct. 1331, 1332 (1971). The Act assists the several States and their political subdivisions to remedy unsafe and unsanitary housing conditions and the shortage of decent, safe, and sanitary dwellings for families of lower income. 42 U.S.C. §1437. The Act authorizes the Department of Housing and Urban Development to provide low interest loans, grants and other assistance for the construction and operation of housing for families with low incomes. 42 U.S.C. §1437b. In order to accomplish this purpose Congress recognized the need to vest maximum power and responsibility with local public housing authorities in order to promote efficient management of the housing programs. *Vandemark v. Housing Auth. of City of York,* 663 F.2d 436, 439 (3rd Cir. 1981). The act includes a declaration of policy which states, in pertinent part, that:

> '[i]t is the policy of the United States . . . to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs.' 42 U.S.C. §1437

The Housing Act did not, as suggested by Petitioner, displace local ordinances relating to building codes, health, safety or zoning. In *Kargman v. Sullivan,* 552 F.2d 2, 11 (1st Cir. 1977), the court held the federal legislation creating the network of subsidized housing laws *is superimposed upon and consciously interdependent with the substructure of local law relating to housing.* The court noted that dwellings on property eligible for §221(d)(3) loans must meet the requirements of all state laws or local ordinances relating to public health

or safety, zoning or otherwise. 12 U.S.C. §1715(d)(2). Id. at 11. These local laws advance significant and uniquely local interests with which courts should not lightly interfere. Id. Given a perceived conflict, especially in an area of strong local concern, reconciliation is to be preferred to complete ouster of a state law or municipal ordinance. Id.

Several state courts have held the National Housing Act was not intended to limit or exclude state action or to exercise supremacy in that area. *United States Constructors and Consultants, Inc. v. Cuyahoga Metropolitan Housing Authority,* 35 Ohio App. 2d 159, 167, 300 N.E. 2d 452, 456 (1973), held the Act merely sets forth a national housing policy to promote the general welfare of the nation by employing funds and credits to assist the states and their political subdivisions in eliminating unsafe and unsanitary housing conditions and the shortage of decent, safe, and sanitary dwellings for families of low income in urban areas by *permitting* the federal government to offer and provide financial assistance in the form of grants and/or loans to state or local housing agencies to develop low rent housing. 42 U.S.C.A. §1409 and 1411. "It is clear . . . that Congress did not intend to limit or exclude state action or to exercise supremacy in this area. There is no conflict between the federal law and regulations and Ohio law in regard to housing." Id. at 167, 300 N.E. 2d at 457.

City of Cleveland v. Berger, 91 Ohio App. 3d 102, 631 N.E. 2d 1085 (1993), held that an apartment building owner who was under contract with HUD to participate in a Section 8 program failed to establish that a complaint against him for city housing code violations was federally preempted. Berger argued the supremacy clause provides for the

preemption of *any* law which conflicts with federal law. Id. at 109, 631 N.E. 2d at 1089. The court held that mere differences between federal law and state law do not constitute a conflict sufficient to invoke preemption; it must be shown that compliance with both federal and state regulations is impossible or that the state law stands to impair achievement of the purposes and goals of the federal statute. Id. at 110, 631 N.E. 2d at 1090. The court held there was no evidence the federal government explicitly preempted state law in the area of public housing or that Congress intended to exclusively regulate the area. Id. at 1090. The court rejected Berger's argument that application of state law would disrupt the proper functioning of the federal Section 8 program, noting that Berger produced no evidence state housing code regulations were in conflict with federal legislation. Id.

In the present case the evidence at trial showed compelling local public health, safety, and welfare concerns. The buildings purchased by Petitioner had been abandoned and vacant for years. Many of the units were fired damaged and missing doors and windows. The local sheriff's office responded to *hundreds* of calls at the vacant buildings after they were acquired by Petitioner. Fire inspectors deemed the buildings fire hazards because they were full of trash, open to entry by vagrants and vandals, and falling down, conditions conducive to arson fires. There had in fact been a series of fires in the buildings.

The Jefferson Parish Council enacted a Dangerous Building Ordinance to protect the health, safety, and welfare of the general public by establishing a requirement that structures which were vacant, unsecured and unrepaired be

secured and repaired by the owner, at the risk of demolition if the owner failed to comply. Economic decline had caused the incidents of vacant, open structures to increase significantly. Derelicts, criminals, and drug traffickers habitually use such structures as hideouts. The Parish Council was compelled to provide a means of forcing owners to abate the hazards or to bear the costs incurred by the Parish in abating the hazards.

Orders requiring correction of the derelict conditions were served on Petitioner. Petitioner entered into a *consent judgment* wherein it agreed to take corrective action within a certain time period, barring which the Respondent was authorized to demolish the buildings. Petitioner did nothing to comply with the terms of the consent judgment. The Respondent, having notice of the dangerous and derelict condition of the buildings, had no choice but to move forward and abate the danger before a policeman, fireman or resident was injured. Had any person been injured in the buildings *after* the deadlines expired, the Respondent faced potential liability for failure to fulfill its governmental responsibilities. The Respondent is not answerable in damages for fulfilling its duty to protect the public health, safety and welfare.

In its statement of the case Petitioner extensively details contacts between Petitioner, the JPHA, and the United States Department of Housing and Urban Development with respect to Petitioner's efforts to secure a HAP contract once renovations were complete. Petition for Writ of Certiorari at 3-11. Petitioner contends demolition of the structures "eradicated two years of administration by HUD and countless hours spent to enforce an Act of Congress which

contains a statement of congressional policy." Petition for Writ of Certiorari at 6. Petitioner overstates HUD's limited role in this matter.

The Jefferson Parish Housing Authority (JPHA) is a separate political subdivision from the Respondent. LSA-R.S. 40:381 et seq. Contracts between the JPHA and Petitioner did not in any manner involve Respondent. (A49-A66).The AHAP between Petitioner and the JPHA was an agreement to enter into a contract for rentals *once the property was renovated.* (A49). Despite a two year effort, Petitioner could not secure financing for the renovations. The AHAP was terminated because Petitioner failed to commence renovations by July 1, 1991. *Hud's only involvement was to approve anticipated rents upon completion of renovations.* See *1610 Corporation v. Kemp,* 753 F.Supp. 1026, 1028 (S.D. Mass 1991).

Further, the AHAP entered into by Petitioner did not by its nature supercede and preempt local building codes or ordinances relating to zoning, health, safety, and welfare. To the contrary, the AHAP specifically provides that when the work is complete the owner must provide the JPHA with a certification that the units have been rehabilitated in accordance with applicable zoning, building, housing, and other codes, ordinances, or regulations. (A56). Rather than supercede and prempt local ordinances, the AHAP specifically requires compliance with such local ordinances.

This Court held that the Housing Act of 1937 does not explicitly provide for preemption of state law with respect to housing. *James v. Valtierra,* 402 U.S. 137, 138, 91 S.Ct. 1331, 1332 (1971). A federal appellate court held that the Housing Act of 1937 is superimposed upon and *consciously*

interdependent with the substructure of local law relating to housing, including requirements of local ordinances relating to public health or safety, zoning, or otherwise. *Kargman v. Sullivan,* 552 F.2d 2, 11 (1st Cir. 1976). Petitioner produced no evidence that local Ordinances on dangerous and derelict buildings are in conflict with *any* federal legislation. Petitioner has not shown that compliance with both federal and state regulations is impossible, or that state law stands to impair achievement of the purposes and goals of the federal statute. Petitioner's contention that local ordinances on dangerous and derelict buildings are preempted by the National Housing Act is meritless.

VI. *CONCLUSION*

Petition fails to carry its burden of showing that "federal claims" now raised were properly presented to the state courts. This Court therefore is without jurisdiction. Even were the court to treat the rule as purely prudential, the circumstances here justify no exception. Further, none of the traditional writ grant considerations exist in this case. No conflicting decisions are cited by Petitioner. Louisiana state courts did not decide any question of federal law. Petitioner does not point out any questions of federal law to be settled by this Court.

Neither the National Housing Act of 1937 nor the Section 8 program are implicated in this case. The fact that Petitioner entered into an AHAP does not establish performance of the AHAP is governed by federal law, or that controversy over its terms "arise under federal law" such that there is federal question jurisdiction. Even if the National Housing Act was implicated, it does not supercede or preempt local

ordinances protecting public health and safety. There was no intent by Congress to preempt local regulation of housing through building codes, zoning, or other ordinances. The AHAP documents themselves call for compliance with such local ordinances.

Petitioner's application for a Writ of Certiorari must be denied.

Respectfully submitted,

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G-/0745/0011/PLEADING/BRIEF.OPP

APPENDIX A

SUPREME COURT OF LOUISIANA

NO: _____

VICARI CONTRACTORS, INC.
Plaintiff/Appellant
RELATOR

VERSUS

PARISH OF JEFFERSON
Defendant/Appellee
RESPONDENTS

APPLICATION BY VACARI CONTRACTORS, INC. FOR WRITS OF CERTIORARI AND REVIEW TO THE LOUISIANA COURT OF APPEAL, FIFTH CIRCUIT IN CASE NO. NO: 97CA 00168c/w97CA00169

ON APPEAL FROM THE 24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA, DOCKET NUMBERS: 420-579c/w434-842 HONORABLE SUSAN CHEHARDY, JUDGE-DIV."N"

ORIGINAL PETITION OF VICARI CONTRACTORS, INC.
Plaintiff/Appellant
Relator

Respectfully submitted,

/s/ Stephen J. Caire

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STATEMENT OF WRIT GRANT CONSIDERATION

a.

Significant Unresolved Issues of Law

At issue in this case is the extent to which a governing authority may condemn any building or structure which is private property; more specifically, when the conditions, which caused the buildings to be condemned, can be cured by remedial measures without demolition, are the owner's fundamental rights to due process of law violated and denied when the governing authority, nevertheless, chooses to itself demolish private property rather than to remedy the offending conditions. Plaintiff/Relator had applied for and been granted a building permit for remedial work.

The issue of the nature and extent of power exercised by a condemning governing authority is a significant unresolved issue of law.

b.

Conflicting Decisions

The governing authority did not vote to order the demolition of Plaintiff's/Relator's apartment complex. The facts presented during the trial of this case raise several issues regarding the delegation of legislative power to the executive branch of the governing authority. Indeed, whether or not the power to demolish private proterty can be delegated is a controlling issue in this case along with the issue of strict interpretation and application of such laws. The decision of the Court of Appeal conflicts with the decisions of the Supreme Court.

c.

Gross Departure From Proper Judicial Proceedings

The credibility and impeachment of witnesses at trial is a key issue. The trial court would not allow counsel for Plaintiff/Relator the opportunity to proceed with an effort to impeach certain witnesses who are members of the executive branch of government or attack their credibility. The court of appeal sanctioned such departure by the lower court from proper judicial proceedings. Under these conditions, Plaintiff/Relator did not receive a fair trial and, as such, the trial of this case merits review by the Supreme Court.

ii.

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MEMORANDUM

(a)

Summary of the Nature of the Case and Prior Proceedings

On July 29, 1991, plaintiff/appellant, Vicari Contractors, Inc., filed a petition for writ of injunction seeking to enjoin defendant/appellee, the Parish of Jefferson, from demolishing plaintiff's/appellant's apartment complex. **(Case NO. 420-579)(Record: Vol. 1, p.I)** Plaintiff/appellant had been informed by defendant/appellee on July 25, 1991, that the work order to demolish plaintiff's/appellant's apartment complex would be issued on Friday, July 26, 1991, and demolition would begin on Monday, July 29, 1991. At the commencement of the trial for a preliminary injunction the parties reached an agreement which was dictated into the record on August2, 1991 **(See Exhibit Vicari #10)**. Notwithstanding the agreement, the Parish of Jefferson, defendant/appellee, did in fact demolish plaintiff's/appellant's complex albeit defendant/appellee, the Parish of Jefferson, had actual knowledge that finality had been reached by plaintiff/appellant with both the Jefferson Parish Housing Authority and the United States Department of Housing and Urban Development to renovate the apartment complex. **See, Vicari Exhibit No. 11)**

The plaintiff, after dictating an agreement in the record, later, on August 23, 1991, refused to sign the consent judgment. Plaintiff/appellant alleged the refusal to sign signified his withdrawl of his consent. Plaintiff claims that at that moment, the Parish of Jefferson was required to seek judicial enforcement; defendant/appellee rather that do so, the Parish of Jefferson, proceeded at its peril to engage in wrongful

conduct by taking private property and destroying it, after admitting by the issuance of a building permit for remedial work that the private property did not need to be destroyed. The agreement which was dictated into the record and reduced to the form of a Consent Judgment was presented to the judge by defendant/appellee, the Parish of Jefferson, and signed by him in chambers on August 23, 1991. **(Record Vol. 1, pp. 15-17)** A petition to annul the Consent Judgment was filed by the plaintiff/appellant on June 24, 1993, shortly after its discovery of fraud and ill practice. **(Case No. 420-579)(Record: Vol. 1, pp. 20-24)** Plaintiff/appellant had also filed a Petition for Damages for Wrongful Demolition of Private Property on June 15, 1992. **(Case No. 434-842)(Record: Vol. single, p.1)**

These cases were consolidated in both the trial and appellate courts. (A clerical error resulted in one of the captions showing plaintiff/appellant to be Vicari Construction, Inc. The real party plaintiff in both cases is Vicari Contractors, Inc.)

On March 26, 1993, defendant/appellee filed a Peremptory Exception of Res Judicata, claiming that the consent judgment signed on August 23, 1991, barred plaintiff's/appellant's damage action. The trial judge denied the exception **Record: Vol. Single, pp. 116-118).** Application For Writs was filed by defendant/appellee in the Court of Appeal, Fifth Circuit, No. 94-C-199 **(Record: Vol. 1, p. 89).** On March 16, 1994, the applicant's writ was denied and characterized plaintiff's/appellant's petition for damages to be an action for wrongful enforcement of the consent agreement. Likewise, the Supreme Court of Louisiana denied the defendant's/appellee's application for writs No. 94-C-1051 **(Record: Vol. page 90).**

The case proceeded to trial and judgment was rendered on August 27, 1996 **(Record: Vol. 2, pp. 319-320)**

The trial judge did not assign reasons for judgment

The Court of Appeal rendered its opinion on October 15, 1997 and affirmed the judgment of the trial court. Plaintiff's/Appellant's application for rehearing was timely filed and was denied on November 17, 1997.

(b)

ASSIGNMENT OF ERRORS

1. The trial judge failed to find that the conduct of the Parish of Jefferson was a wrongful enforcement of the consent agreement between plaintiff/appellant, Vicari Contractors, Inc. and defendant/appellee, the Parish of Jefferson. This failure was error.

2. The trial judge failed to find that the wrongful enforcement of the consent agreement was a cause in fact by defendant/appellee, the Parish of Jefferson, of damage to plaintiff/appellant Vicari Contractors, Inc. This failure was error.

3. The trial judge failed to find that the refusal by plaintiff/appellant to sign the consent judgment established a lawful withdrawal of it consent. This failure was error.

4. The concurrence of both spouses is required to dispose of all or substantially all of the assets of a community business. The trial judge gave judicial recognition to the consent agreement which disposed of all the assets of the corporation. In so doing, the trial judge was in error.

5. The plaintiff/appellant, a corporation, did not receive notice according to law. The trial judge failed to find insufficient notice. The trial judge in so doing committed error.

6. The trial judge prohibited counsel for plaintiff/appellant from impeaching the testimony of Mr. Paul Connick, Sr., and Mr. Perrin C. Butler, Jr. This restraint imposed upon counsel for plaintiff/appellant was error.

7. The trial judge dismissed plaintiff's/appellant's Petition to Annual the August 2, 1991, Consent Judgment. This dismissal was error.

8. The trial judge to sequester witnesses permitting both Mr. Paul Connick, Sr. and Mr. Perrin C. Butler, Jr. to remain in the courtroom during trial. Both of these gentlemen were significant material witnesses as representatives of the defendant/appellee, Parish of Jefferson. This ruling of the trial Judge was error.

(c)

Summary of Argument

A.

Interpreting Statutes And Ordinances

We must be governed by the well-established principles of statutory interpretation of our State if we are to ascertain their meaning. Those principles are:

1) Where the words of a law are dubious, their meaning may be sought by examining the context with which the ambiguous words, phrases and sentences may

be compared, in order to ascertain their true meaning. **(LSA-CC Art. 16; NOW, LSA-CC Art. 12)**

2) Laws in pari materia, or upon the same subject matter, must be construed with a reference to each other, what is clear in one statute may be called in aid to explain what is doubtful in another. **(LSA-CC Art. 17: NOW.LSA-Art. 13)**

3) Statutory provisions should be construed along with the remainer of the statute and in connection with all laws on the same subject matter. **Melancon v. Mizell, 44 So.2d. 826 (La., 1950)**

4) All statutory provisions are to be given effect whenever possible. **Chappuis v. Reggie, 62 So.2d. 92 (La., 1952)**

5) A title is no part of a statute, but it may be considered in determining legislative intent where doubt exists. ***Schimpf v. Thomas*, 15 So.2d. 880 (La., 1943)**

In the case of ***Abbott v. Parker*, 249 So.2d 908 (La., 1971)**, the Supreme Court of Louisiana explained that a special statute prevails over a general statute, holding:

> Under this construction of Paragraph (T), the special law (constitutional provision) relating to issuance of bonds by the Stadium District prevails over the subsequent general legislation regulating bond-issuance. A general rule of statutory construction is that, in the absence

of legislation intent to the contrary, a special statute enacted for a particular purpose will not be presumed to have been within the scope of a subsequent general enactment on the same subject matter, State ex rel. Day v. Rapides Parish School Board, 158 La. 251, 103 So. 757 (1925); that, in the event of ambiguity or conflict, special laws prevail over general laws. ***State v. Mejia*, 250 La. 518, 197 So.2d 73 (1967); State Through *Department of Highways v. Macaluso*, 235 La. 1019, 106 So.2d 455 (1958); see 82 C.J.S. Statutes s 347 b.** Here, of course, mere legislation general in nature cannot be deemed to have modified a self-executing constitutional provision specially regulating in its entirety a specific state instrumentality.

B.

Factual Summary

1. The Parish of Jefferson did not delegate its police to order the demolition of dangerous buildings owned in the private sector to its executive branch of government; accordingly, the demolition of plaintiff's apartment complex by offices or employees of the Parish of Jefferson was vires acts for which the Parish of Jefferson is liable to plaintiff. **(See testimony of former Parish President, Michael J. Yenni, by deposition as Vicari Exhibit No. 4)**

2. The Jefferson Parish Council, governing authority, retained its police power regarding owners of private property who were participating in HUD'S Federal Section 8 Project Based Assistance program by passing a special resolution

addressed to HUD requesting that HUD expedite its processing of pending participants, of which plaintiff was one. **(Vicari Exhibit No. 6)**

3. The executive branch of the Parish of Jefferson, through its then President, Hon. Michael J. Yenni, did not deligate any authority to either Mr. Paul Connick, Sr., Chief Administrative Assistant, or to Mr. Perrin C. Butler, Jr., Assistant Parish Attorney; on the contrary, he too wrote letters to HUD stating that "...this project is very necessary to meet the needs of the low income people in this area who would like to live there and it is an integral part of our overall strategy for the restoration of this very strategic neighborhood." **(Vicari Exhibits No. 7 & 8)**

4. Parish President Yenni, in his letter to HUD dated December 14, 1990, recognized the Jefferson Parish Housing Authority as the specific agency to which authority had been delegated to administer HUD'S Section 8 Project Based Program saying, "...The Housing Authority of the Parish of Jefferson's assessment of the placing of the Project in this area was one that was taken with much care and thought concluding that the above site was very accessible to social, recretional, educational, commercial, and health facilities and services and other municipal facilities. ***In fact, it appears that the above site is superior to many other sites in Jefferson Parish in that all of the above amenities outlined can be accessed by these residents without motorized transportation.***"**(emphasis added) (Vicari Exhibits No. 7 & 8)**

5. Plaintiff purchased the property relying upon the authority delegated to the Jefferson Parish Housing

Authority as described by Mr. Yenni in his letter to HUD dated December 14, 1990; and, which authority had been delegated far in advance of the purchase of the property by plaintiff on December 29, 1989. **(Vicari Exhibit No. 1 and Exhibit D #12)**

6. The Housing Authority of Jefferson Parish executed a contract with plaintiff, the effective date of that agreement being May 30, 1991. **(Vicari Exhibit No. 5)**

7. On August 22, 1991, prior to commencing demolition of plaintiff's apartment complex, defendant/appellee had actual knowledge that HUD had given its final approval to the contract between the Housing Authority of Jefferson Parish and plaintiff. **(Vicari Exhibit No. 11)**

8. Mr. Paul Connick, Sr., admitted having a meeting with plaintiff's representative, Mr. Peter G. Vicari, who advised Mr. Connick of the approval by HUD, which meeting was on or about August 22, 1991. At that meeting Mr. Connick told Mr. Vicari that he did not care about HUD'S approval and was going to demolish plaintiff's buildings anyway. Mr. Connick's agreed that he knew of HUD'S approval. **(Record: Vol. 3, p. 35, lines 18-20)(Record: Vol 2, p. 396, lines 12-32)(Record: Vol. 3, p. 631)**

9. Plaintiff's sole asset was the apartment complex demolished by the Parish of Jefferson and Mr. Peter G. Vicari lacked authority, as a matter of law, to dispose of that asset in any manner whatsoever. **(Testimony of Barbara Vicari, Vol 3, p. 654, lines 6-32; p. 655, lines 1-8)**

10. Mr. Peter G. Vicari was not the agent for service

of process on plaintiff, and, as a matter of strict construction of the law, plaintiff did not receive sufficient notice of these condemnation proceedings. **(Testimony of Barbara Vicari, Vol. 3, lines 19-25)**

11. The conduct of Mr. Paul Connick, Sr., in having plaintiff's apartment complex demolished were acts on his part, which are not reasonably related to the legitimate governmental objective of the Parish of Jefferson to participate in JUD'S Section 8 Project Based Assistance Program; furthemore, such conduct was outrageous, reckless and flagrant misconduct for which the Parish of Jefferson is liable to plaintiff. **(Testimony of Mr. Connick; Record: Vol. three, p. 628 lines 25-32, p. 629 lines 1-24)**

ARGUMENT ON ASSIGNMENT OF ERRORS 1 AND 2

PART 1.

Defendant/Appellee, the Parish of Jefferson, demanded in the ORDERS dated May 24, 1991 that Vicari perform certain remedial or curative work on the buildings so that permits could be issued and work begun on the apartments. In those orders, which are already part of the record before this Honorable Court, Vicari was directed to Exhibit C of the order remedy the defects, which states in part:

2. The owner has until the 30th day following the date of this order to perform one of the following:

(a) obtain a building permit from the JEFFERSON PARISH DEPARTMENT of INSPECTION and CODE ENFORCEMENT for the repair of the building

> and begin repairs to the building in conformity with all applicable Parish and State Codes.

The Parish of Jefferson issued an ORDER similar to this for all of Vicari's buildings, each dated May 24, 1991.

On August 6, 1991, the Parish of Jefferson executed a RELEASE OF ORDER for each of Vicari's buildings. Paul Connick, Sr., head of the Dangerous Building Abatement Division of Jefferson Parish, signed each release. Each release was executed before a notary public in the presence of two witnesses. Each release states under oath **"That said order has been *satisfied*** and that this affidavit is now made for the purpose of authorizing and directing the Reorder of Mortgages for the Parish of Jefferson **to erase the said Order entirely** from his records." **(See Defendant's Exhibit D #58)**

La. Civil Code Article 1835 sets forth the significance of an authentic act as it "constitutes full proof of the agreement it contains, as against the parties, their heirs..." La. Civ. Code Art 1835. Article 1848 clearly states that "[t]estimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature.

In ***Brown v Drille, Inc.***, 630 So.2d 741, 93-1019 (La. 1994), the Supreme Court addressed the issue of allowing parol evidence to modify the contents of an authentic act.

> Louisiana courts, applying LSA-C.C. Art. 2056's general rule of construction, have not hesitated to confine their analysis to the four corners of the instrument. When, as in that instance, a contract can be construed from the four corners of the instru-

> ment without looking to extrinsic evidence, the ***question of contractual interpretation is answered as a matter of law and thus summary judgment is appropriate.*** *Wilson v. Cost+Plus of Vivian, Inc.*, 375 So.2d 683, 685 (La.App.2d Cir. 1979); *Horton v. Mobley*, 578 So.2d 977, 982 (La.App. 2d Cir. 1991).

Brown, at 749-750 **(emphasis added)**. It is undeniable that each of these releases is an authentic act and satisfies all of the formalities set forth in **L.A.Civil code Article 1833**. The words of the releases are clear and explicit and lead to no absurd consequences, therefore no further interpretation may be made in search of the parties' intent. **La. Civ.Code Art. 2046.**

In ***Billiot v. MOMAR, Inc.***, 655 So.2d 363 (Ct. of App. 5th Cir. 1995) the Fifth Circuit Court of Appeals also addressed the issue of allowing parol evidence to refute or contradict the terms of an authentic act.

> **The meaning and intent of the parties to written contract which is clear, explicit, and leads to no absurd consequence must be sought within the four corners of the instrument,** Bonfanti Marine, Inc. v. Clement, 439 so.2d 537 (La.App. 1st Cir. 1983); McClelland v. Security Industrial Insurance Co., 426 So.2d 665 (La.App. 1st Cir. 1982), writ denied, 430 So.2d 94 (La. 1983). **Parol evidence may not explain, vary, add to, or subtract from the writing.** Ashley Enterprises, Inc. v. Esplanade Plaza Co., 425 So.2d 1010, 1012 (La.App.5th Cir.), writ denied, 432 So.2d 270

> (La.1983); Carnpesi v. Margaret Plantation, 417 So.2d 1265, 1269 (La.App. 1st Cir.), writ denied, 422 so.2d 163 (La.1982); Mathieu v. Nettles, 383 So.2d 1337 (La.App. 3rd Cir.) writ denied, 390 So.2d 202 (La.1980).

Id. at 366 **(emphasis added)**.

Defendant, the Parish of Jefferson, executed authentic acts wherein it stated unequivocally that Vicari had complied with the requirements of its ORDERS dated May 24, 1991. However, Defendant then proceeded to demolish Vicari's buildings **without notice,** operating under the premise that Vicari had not complied with the requirements of the ORDERS dated May 24, 1991.

In essence, the Parish of Jefferson had sworn under oath that Vicari satisfied the requirements. Any other position taken now by Defendant would be inconsistent with the authentic acts recorded in the mortgage record of Jefferson Parish, and would be an attempt to vary the terms of an authentic act. The Civil Code and the jurisprudence are clear that Defendant may not assert anything other than that which it has already sworn to in its authentic act. Given the inability of defendant to maintain any other position, it is clear that defendant wrongfully demolished Vicari's buildings based on the "four corners"; of defendant's releases.

PART 2.

In this case the special statute upon which plaintiff relies is **LSA - R.S. 33:1236(11)**, which provides in pertinent part:

(m) Housing development and services organizations, including development of programs and services, under other federal housing legislation, for needy tenants and homeowners, but not including mortgage loans and long-term capital financing;

The Jefferson Parish Housing Authority was acting under authority of the above quoted statute on behalf of the Parish of Jefferson when it executed the contract with plaintiff. The objective of that statute was accomplished by the Jefferson Parish Housing Authority; therefore, the demolition of plaintiff's apartment complex cannot be rationally related to the exercise of police power by the Parish of Jefferson under the aegis of a general statute. See *Abbott*, supra.

LSA - R.S.33:1236 (49), provides in pertinent part:

(a)(i) To enact ordinances relating to the repair and condemnation of buildings, dwellings, and other structures that have become derelict and present a danger to the health and welfare of residents of the parish upon adequate notice to the owner. However, with respect to structures within a historical preservation district, the governing authority of the district shall have concurrent authority with respect to such matters.

(ii) The phrase "derelict and present a danger to the health and welfare", as used in this Paragraph, shall include, but not be limited to, buildings or structures which have any of the following characteristics:

(aa) Are structurally unsafe.

(bb) Are not provided with adequate egress.

(cc) Constitute a fire hazard.

(dd) Are otherwise dangerous to human life.

(ee) By way of existing use or condition constitute a hazard to public safety, health, or welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, or abandonment.

.iii) Ordinances enacted pursuant to this Paragraph may declare such derelict structures to be public nuisances, and require their repair, rehabilitation, demolition, or removal.

(iv) The governing authority of any parish may request and the adjutant general may assign, subject to the approval of the governor, national guard personnel and equipment to assist in the removal and demolition of condemned buildings, structures, or public nuisances. The provisions of this item shall be applicable when the budget for the demolition and removal of condemned structures has been expended by the governing authority of a parish. However, the request must be accompanied by documentation that all procedural protections and substantive restraints have been adhered to by the governing authority. In the event all protections and substantive restraints have been adhered to by the governing authority, the parish and their personnel and the national guard and their personnel shall not be liable to the owner of

the building, structure, or public nuisance for any damages sustained resulting from the demolition of the building, structure, or public nuisance.

(b)(i) In the exercise of the authority herein granted, ***the governing authority of the parishes of Jefferson.*** Calcasieu, Tangipahoa, St. Helena, Quachita, West Baton Rouge, Iberville, Caddo, and Livingston may, among other things but not by way of limitation ***require or compel property owners to repair or demolish such structures on their property.***

The Supreme Court of Louisiana explained the principle in ***Chappuis v. Reggie, 62*** **So.2d 92 (La., 1952).** saying:

The uniform jurisprudence is to the effect that all statutory provisions are to be given effect whenever possible. LSA Civil Code of Louisiana, Art. 17; State v. Texas Co., 205 La. 417, 17 So. 2d 569; Town of Abbeville v. Police Jury, 207 La. 779, 22 So. 2d 62; Melancon v. Mitzell, 216 La. 711, 44 So.2d 826. If acts can be reconciled by a fair and reasonable interpretation, it must be done since the repeal of statute by implication is not favored and will not be indulged if there is any other reasonable construction. Town of Abbeville v. Police Jury, supra; State v. Standard Oil Co. of La., 188 La. 978, 1054, 178 So. 601; Mouledoux v. Maestri, 197 La. 525, 2 So. 2d 11; State v. Jones, 220 La. 381, 56 So. 2d 724. Moreover, where two acts relating to the same subject are passed at the same legislative session, there

> is a strong presumption against implied repeal, and they are to be construed together, if possible, so as to reconcile them, giving effect to each. State v. Shushan, 206 La. 415, 19 So. 2d 185; City of New Orleans v. Board of Supervisors of Elections, 216 La. 116, 43 So. 2d 237. In the latter case this Court quoted with approval the following language: "Where it is possible to do so, it is the duty of the courts, in the construction of statutes, to harmonize and reconcile laws * * *. These rules are particularly applicable to statutes passed at or about the same time or at the same session of the legislature, since it is not to be presumed that the same body of men would pass conflicting and incongruous acts.' 216 La. at pages 144-145, 43 So.2d at page 246.

Therefore, the mandate of the Supreme Court of Louisiana is that it is the duty of the court to harmonize and reconcile the above quoted sections of **LSA -R.S. 33:1236**. Such harmony and reconciliation dictates that judgment be rendered to favor of Plaintiff/Relator, Vicari contractors, Inc.

ii.

ARGUMENT ON ASSIGNMENT OF ERROR NO. 3

A more detailed explanation of the significance and characterization of a consent judgment was given by the Third Circuit Court of Appeal of Louisiana in the case of ***Succession of Morvant.*** 578 So.2d 549 (Ct. of App. 3rd Cir., 1991), wherein the court said

> A consent judgment is a bilateral contract and must be based on consent, an essential element of a contract. At the heart of the consent judgment

is an admission by a party to the litigation of the validity of his opponent's claim against him in such a way as to leave no issue to be tried. Comment (c), LSA - C.C.P. Art. 2085.

The jurisprudence has established certain guidelines for determining whether a certain judgment was consensual. In King v Crawford, 334 So.2d 476 (La.App. 1st Cir. 1976), writ refused, 337 so.2d 879 (La.1976), ***the appellate court*** refused to dismiss an appeal, finding that although a consent judgment was confected, the appellant the withdrawal of his consent by refusing to sign it on the ground that the judgment did not reflect the stipulation to which all parties agreed. Likewise, the various appellate courts have looked to other procedural mechanisms utilized to show disagreement with a consent judgment which would signify rejection of the consensual requirement. In Martin v. Holder Sheet Metal Works, Inc., 176 so.2nd 500 (La. 1979), the Supreme Court implied that it would have considered the rejection of the consent judgment had the employer's attorney objected on record to the provisions of the judgment or had he moved for a new trial. See also Hill v Hill, 471 So.2nd 1130 (La.App. 3rd. Cir.1985)

The consent judgment at issue shows counsel for the plaintiff refused to sign the consent judgment alleged to be res judicata. By refusing to sign, the plaintiff, through his counsel, signified the withdrawal of his consent. At that moment, the defendant, the Parish of Jefferson, was required to seek judicial enforcement; rather than do so, the Parish of Jefferson, proceeded at its peril to engage in infamous conduct by taking private property and destroying it after ad-

mitting, by the issuance of a building permit, that the private property subject of the taking did not need to be destroyed.

In ***Morvant,*** supra, the court further recognized:

> A compromise is a contract. LSA-C.C. Art. 3071. Legal agreements have the effect of law upon the parties and the courts are bound to give legal effect to all such contracts according to the true intent of the parties. Smith v. Leger, 439 So.2d 1203 (La.App. 1st Cir.1983).
>
> * * *
>
> In the present case, the trial court correctly concluded that the judgment of possession embodied a compromise between the parties which was recited into the record in open court. However, under LSA-C.C. Art. 3079 and interpretative jurisprudence, contracts of compromise may be vitiated by error of fact bearing on the principal cause, and may be rescinded whenever there exists an error on the matter in dispute. Misuraca V. Metropolitan Life Ins. Co., 199 La. 868, 7 So.2d 167 (1942).

There can be no doubt that the consent judgment, even if the court should find that it is valid notwithstanding the absence of the signature of counsel for the plaintiff, that it may be vitiated by error of fact bearing on the principal cause, and may be rescinded. The error in this case was the reliance by the Parish of Jefferson on HUD's admitted error in approving only fifteen (15) units.

iii.

ARGUMENT ON ASSIGNMENT OF ERROR NO. 4

Peter G. Vicari and Barbara T. Vicari have been married to each other but once, and were living together as husband and wife at the time of the formation of the corporation, Vicari Contractors, Inc. Since Vicari Contractors, Inc. was formed during the marriage of Peter G. Vicari and Barbara T. Vicari, and was formed using community funds, Vicari Contractors, Inc. is a community owned business enterprise.

In that regard, **LSA - CC Art 2338,** entitled Community Property, provides:

> The community property comprises; property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse, property acquired with community things or with community and separate things, unless classified as separate property under Article 2341; property donated to the spouses jointly; natural fruits of community; damages awarded for the loss or injury to a thing belonging to the community; and all property not classified by law as separate property.

In ***International Stevedores Inc., v. Hanlon,*** 499 So.2d 1183 (5th Cir., 1986), this Court held:

> A stock certificate is prima facia evidence of corporate ownership, but is distinguished from actual ownership, which may be determined from all the facts and circumstances of the case. ...It is only

> paper evidence of the ownership of shares of stock created for convenience. It is not the certificate which is subject to ownership, but the share of stock itself.

As such, neither Mr. Vicari nor his wife, could have undertaken to unilaterally dispose of that property designated as community. Support for this concept is found in **LSA - CC Art. 2337** entitled Disposition of Undivided Interest, which provides:

> A spouse may not allienate, encumber, or lease to a third person his undivided interest in the community or in particular things of the community prior to the termination of the regime.

Generally, each spouse acting alone may manage, control, or dispose of community property unless otherwise provided by law. See **C.C. Art. 2346.** However, the laws dealing with the management of community property recognize exceptions which are pertinent to this case. The exceptions are provided in **C.C. Art. 2346** and stated by the phrase "*unless otherwise provided by law.*"

In this case there are two (2) exceptions which are pertinent. The first is **C.C. Art. 2347** which provides:

> The concurrence of both spouses is required for the alienation encumbrance, or lease of community immovables, furniture or furnishings while located in the family home all or ***substantially, all of the assets of a community enterprise*** and movables issued or registered as provided by law in the names

of the spouses jointly. (Emphasis added)

Another such exception is found in **C.C. Art. 2353** which addresses the effect of alienation of community property by one of the spouses. That article provides:

> When the concurrence of the spouses is required by law, the alienation, encumbrance, or lease of community property by a spouse is relatively null unless the other spouse has renounced the right to concur. Also, the ***alienation, encumbrance, or lease of the assets of a community enterprise by the non-manager spouse is a relative nullity.*** (Emphasis added)

In the instant case not only is the controlling authority governing Mr. Vicari's inability to disposes of the entire asset base of the corporation as cited above, but the laws respecting corporations, **LSA R.S. 12:121,** also govern the voluntary transfer of corporate assets and, in pertinent part, provides:

> B. If the corporation is ***not insolvent,*** such authority may be given only by the ***shareholders,*** by vote of at least two-thirds of the voting power present (or by such greater or lesser proportions, not less than a majority, of the voting power present or of the total voting power, as the articles may require)
> . . .

Thus, the above quoted pertinent part of **LSA R.S. 12:121** is consistent with the laws regulating the management of community property. The Consent Judgment which resulted

in the demolition of all of the assets of Vicari Contractors, Inc. is not valid because **LSA R.S, 12:121** required a vote in favor of such action by Barbara T. Vicari, which she did not give. Based on the reasoning in the above cited case, entitled ***International Stevedores Inc., v. Hanlon.*** Barbara T. Vicari, by virtue of the laws regarding management of the community property regime, owns a fifty percent (50%) interest in the shares of stock of Vicari Contractors, Inc.

When the above three (3) articles regarding the community property regime are applied to the facts in this case, it bocomes clear that the concurrence of both spouses is required to validy enter into an agreement which results in a demolition of substantially all of the assets of a community enterprise. Both spouses held executive positions with the corporation. Peter G. Vicari held the office of president, and Barbara T. Vacari held the office of secretary. The participation of each in the management of the assets of this community enterprise is evidenced by the sale of property to Vicari Contractors, Inc. on December 29, 1989.

The testimony of Barbara T. Vicari on rebuttal clearly shows that she had not renounced her right to concur in the alienation of the assets of a community enterprise; therefore, the agreement reached in open court on August 2, 1991, without the concurrence of Barbara T. Vicari is null under the authority of **C.C. Art. 2353.**

iv.

ARGUMENT ON ASSIGNMENT OF ERROR NO. 5

PART I

The Supreme Court of the Louisiana, in **Housemaster Corp. V. City of Kenner,** 374 So.2d 1240 (La., 1979) held:

> Generally, a municipality in the exercise of its police power may, without compensation, destroy a building or structure that is a menace to the public safety or health. At a minimum, however, that municipality must, before destroying a building, give the owner sufficient notice and a hearing to satisfy the governmental responsibility to accord due process of law. 7 E. McQuillan, Municipal Corporations 24.561 (3d ed 1968); *Miles v. District of Columbia,* 510 F.2d 188 (D.C. Cir. 1975). We consider it axiomatic that statutes providing these procedural protections and substantive restraints must be strictly construed, particularly to the requirement that the property owner be notified of the hearing.

LSA - R.S. 33:4771 et seq governs the exercise of police power by a political subdivision in the enforcement of its building code. That statute, in pertinent part, provides:

> (2) "Building Code" means any building, mechanical, plumbing, electrical, fire prevention, or other regulatory code or ordinance adopted by a political subdivision which established minimum standards for the use, occupancy, design, planning, engineering, construction, alteration, installation, repair, maintenance, location, removal, *or demolition* of any building, structure, or improvement to immovable property or for the quality of materials or equipment used in connection therewith.
>
> * * *

> (9) "Political subdivision" means any ***parish or municipality which has authority to adopt and enforce a building code pursuant to this Part.*** LSA - R.S. 33:1236, ***any other general or special law, any charter or home rule plan of government, or any other authority or grant of power.*** (Emphasis added)

Therefore, the Parish of Jefferson falls within the definition of the statute which governs the removal of dangerous structures, particularly LSA -R.S. 33:4761, et seq. In that regard, the Supreme Court of Louisiana has recognized that **LSA - R.S. 33:4762** is to be strictly complied with, ***Housemaster,*** supra. that statute provides strict requirements which must be satisfied before a governing authority can exercise its police power to demolish private property. **LSA - R.S. 33:4762 A.** provides:

> Before the ***governing authority*** may condemn any building or structure, ***there must be submitted to it a written report recommending the demolition or removal of the building signed by some city official or other person authorized to act in such matters*** for the municipality. The mayor or chief executive shall thereupon serve notice on the owner of the building or structure requiring him to ***show cause at a meeting of the governing authority,*** regular or special, why the building or structure should not be condemned. The date and hour of the meeting shall be stated in the notice which shall be served at least ten days prior to the date of the hearing except in case of grave public emergency as thereinafter provided. The notice may be served

by registered or certified mail, postage prepaid, addressed to the owner at his last known address. The notice may also be served by the marshal of the municipality or by any sheriff or deputy sheriff or constable having jurisdiction and power to serve legal process where the owner of the buyilding or structure is found in the State of Louisiana, and their officer shall make return of the sservice as in ordinary cases. (Emphasis added)

LSA – CC Art.17 [now CC Art. 13] states: "Laws on the same subject matter must be interpreted wiwth reference to each other." The interpreter must also look to the provision of R.S. 33:4762 A, to determine the intent of the Legislature that attaches to the police power delegated to political subdivisions when the political subdivsion condemns any building or structure. The requirement established by the Legislature in R.S. 33:4762 A is that a written report recommending the demolition must be signed by some official authorized to act in such matters and, then, a meeting of the governing authority of the political subdivision must be held so that the gaoverning authority itself has the opportunity to determine whether or not it should exercise police power to demolish private property.

The Parish of Jefferson ***did not prepare a written*** report recommending the demolition of plaintiff's building; nor was a meeting of the governing authority convened for that purpose. **(Record: Vol. 3, p. 644)** Therefore, the Parish of Jefferson failed to strictly comply with Louisiana Law and negligently demolished plaintiff's property causing substantial economic damages.

PART II

The parish of Jefferson further failed to strictly comply with its own ordinance, number 18050, as amended by ordinance No. 18130. **(Exhibit D #80)**. That ordinance addresses the procedures to be followed regarding the exercise of its police powers to demolish dangerous buildings. Sec. 19-63 (f) (3) specifically restricts the demolition of a building to one which cannot reasonably be repaired. The Parish of Jefferson issued to Vicari Contractors, Inc. a building permit **(See Defendant/Appellee Exhibit No. D 52) (Record: Vol. 1, p, 45)** and thereby acknowledged that the building could have been reasonaably repaired.

Furthermore, Sec. 19-63 (h) provides that after the Owner has taken measures, i.e. obtained a building permit to perform the remedial work, the Owner must receive notice and the Hearing Officer shall reconvene the hearing before he may issue a revised order that the building be demolished.

Accordingly, the Parish of Jefferson ignored not only the laws of the State of Louisiana but also its own ordinance, both of which establish a duty on the part of the governing authority to determine that the building cannot reasonably be repaired. The Parish of Jefferson violated that duty to the plaintiff and caused substantial economic loss.

In conclusion, plaintiff/appellant vigorously argues that the United States Department of Housing and Urban Development, HUD, would certainly not have approved plaintiff's buildings for a federaly funded project if those buildings could not reasonably be repaired.

PART III

Delegation Of Legislative Power To Executive Branch Prohibited As Unconstitutional

The Supreme Court of Louisiana has had occasion to decide how administrative officers can administer laws. In ***Commissioner of Agriculture v. Plaquemines Parish Commission Council,* 439 So.2d 348 (La. 1983).** our Supreme Court held:

> Here, the statute has no standards to guide the advisory commission on pesticides or the commissioner in determining whether to approve or disapprove more restrictive regulations by local political subdivisions. Absent any standards, the requirement is void as an unconstitutional delegation of legislative power to the executive branch of government.

Neither Mr. Connick nor Mr. Butler were given any standards to guide them. If there was any delegation at all, it was to the "independent hearing officer". Therefore, to the extent that any delegation to them may have been intended by the Jefferson Parish Council and, considering both testified that they acted in ignorance of the resolution of the Council, the President's letters and the contract executed by the Jefferson Parish Housing Authority, such a delegation of police powers is unconstitutional.

It is axiomatic that at the time the decision was made by Mr. Connick to demolish Plaintiff's/Relator's private property, all other decisions affecting private property were made by a vote of the Jefferson Parish Council. The various

boards and commissions acted in an advisory capacity only. Stated another way, the Jefferson Parish Council did not delegate its decision making authority to boards and commissions such as the Zoning Appeal Board, the Planning Advisory Board and the Standards and Appeals Board (Building Code). Presently, the decision to demolish private property is determined by a vote of the Jefferson Parish Council, a right of due process which was denied to Vicari Contractor, Inc. because Mr. Connick alone made that decision.

Additionally, the Supreme Court of Louisiana has held that a local governmental authority cannot prohibit a person from performing acts after a license (permit) has been issued, ***City of Shreveport v. Restivo*, 491 So.2d 377 (La. 1986)**, reasoning:

> The critical issue involves the Code's prohibition against a journeyman plumber's engaging in any manner in the business of plumbing, although he holds an occupational license from the State, unless he or a member of his firm is licensed as a master plumber. Therein lies a possible conflict between the Code and the statutes, but the issue is more approriately addressed in terms of the *reasonable* exercise of the City's police power.
>
> Police power is the power of a governmental body to impose laws and regulations which are reasonably related to the protection or promotion of a public good such as health, safety or welfare. City of Shreveport v. Curry, 357 So.2d 1078, 1079 (La. 1978). The business of plumbing is so intimately connected with the public health as to be generally the proper subject of regulation under the police

power of the governing authority. State v. Malory, 168 La. 742, 123 So. 310 (1929). However, it is also necessary to determine whether the section under scrutiny is reasonably related to some objective concerned with public health.

As previously stated, there was no evidence whatsoever in the record. Moreover, there is no apparent reason related to the public health why a licensed journeyman plumber cannot engage in the business of plumbing to the extent of repairing a leaking lavatory without being a master plumber or being in a firm with a master plumber. (FN5) The Code recognizes that such work does not even necessitate the issuance of a permit. The same objective which apparently prompted the City to require licensing of master plumbers cannot be said to warrant requiring a master plumber's license to fix a leaking lavatory.

On the narrow issue presented in this case, we hold that the City of Shreveport may not enforce Section 102.1 against a licensed journeyman plumber who engages in the plumbing business to the extent of repairing a leaking lavatoy.

The demolition of plaintiff's apartment complex was not reasonably related to some objective concerned with public health simply because ***the Parish of Jefferson issued to plaintiff a building permit, and, thereby admitting that something other than demolition was reasonable.***

The Supreme Court of Louisiana has further held, in ***Coliseum Square Association v. City of New Orleans,*** **544 So.2d 351 (La. 1989).**

> It is a violation of good faith to the public, and to those who acquired property in reference to the plan of a city with a view to the enjoyment of the use thus publicly granted, to afterwards appropriate a street to private uses. ***City of Baton Rouge v. T.J. Bird, Sheriff, et al,*** 21 La.Ann. 244 (1869). Also see De Armas, et al. v. mayor, etc. of New-Orleans, 5 La. 132 (1833), dismissed for lack of jurisdiction 34 U.S. (9 Pet.) 224, 9 L.Ed. 109 (1835).

Plaintiff in the case at bar acquired property in reference to the plan of the Parish of Jefferson as described by Hon. Michael J. Yenni, Parish President, in his letter to HUD dated December 14, 1990. The demolition of its property was a violation of good faith since, Mr. Connick proceeded to have plaintiff's buildings demolished having arrived at that conclusion arbitrarily and capriciously, ***completely contrary to substantiated competent evidence, i.e., the building permit, JPHA's contract with plaintiff, letters from the parish president, the council resolution and HUD's approval.*** The Supreme Court in ***Coliseum,*** supra, defined arbitrary and capricious as:

> Generally, "capriciously" has been defined as a conclusion of a commission when the conclusion is announded with no substantial evidence to support it, or a conclusion contrary to substantiated competent evidence or of the proper weight thereof. Favrot v. Jefferson Parish Council, 470 So.2d 286 (La. App. 5th Cir. 1985); Torrance v. Caddo Parish Police Jury, supra.

Part IV.
Parish Administrative Officials Had No Discretion

The Supreme Court of Louisiana applied its interpretation of the discretionary function exception in two recent cases.

In ***Rick v. State, Dept. of Transp. and Development*, 630 So.2d 1271, (La. 1994)**, the Supreme Court made the following analysis:

> This Court considered the discretionary function exception to state liability in ***Fowler v. Roberts***, 556 So.2d 1 (La.1989). Judicial inteference in executive actions involving public policy is restrained by the exception. The Louisiana statute immunizes public entities like the DOTD from liability for policy-based decisions.
>
> A two-step analysis determines whether the exception applies. ***Berkovitz by Berkovitz v. U.S.***, 486 U.S. 531, 108 S.Ct. 1954, 100 L.Ed.2d 531 (1988). First, a court must determine whether the action is a matter of choice. If no options are involved, the exception does not apply. If the action involves selection among alternatives, the court must determine whether the choice was policy based. Decisions at an operational level can be discretionary if based on policy. ***U.S. v. Gaubert***, 499 U.S. 315, 111 S. Ct. 1267, 113 L.Ed.2d 335 (1991).
>
> The DOTD argues that whether a particular crossing is selected for upgrade is a matter of discretion protected by the exception. Selecting one crossing for upgrade in preference to another equally

deserving crossing would probably be a policy decision. However, this crossing was not selected for earlier upgrade because the DOTD negligently assigned it a low hazard index. It the DOTD had examined its own data, it would have assigned a much higher hazard index to this crossing. Using 1974 data to formulate a 1986 hazard index was not a policy decision. It was operational negligence on the part of the DOTD. this operational negligence and the resulting low hazard index postponed the improvement of this crossing.

After the crossing was selected for upgrade in 1986, there was further delay which the DOTD attributes to the railroad's failure to respond. The erroneous hazard index submitted to the railroad may have contributed to the delayed reaction of the railroad. The DOTD admitted that it made no effort to obtain a timely response and did not calendar or monitor the railroad's reaction. The DOTD does not ascertain that a railroad has even received a priority notice. The railroad prepares the upgrade plans and estimates under an unknown timetable. These plans and estimates were received from the Illinois Central Railroad on September 2, 1988, after Mrs. Rick's accident. ***The DOTD's failure to inquire about the status of the crossing upgrade constituted further operational negligence. The failure was not shown to be based on any policy considerations.*** Compare Simeon v. Doe, 618 So.2d 848 (La. 1993). (emphasis added)

The Parish of Jefferson introduced evidence of its own "operatioinal negligence" when it proved that it had knowledge of all the fires that occurred in 1988-89, a period

of two years, and did nothing toward proceeding to declare the property dangerous; instead, having such knowledge, the Parish of Jefferson placed nothing in the public records to alert plaintiff, an innocent purchaser, that the apartment complex was a target of its police power objective to protect and promote the lives, health, morals, comfort, and general welfare of its people as a whole.

The Supreme Court of Louisiana further classified "delay" as operational negligence in ***Archon v. Union Pacific R.R.*, 657 So.2d 987, (La. 1995),** thusly:

> Having found that DOTD was negligent in failing to install adequate warning signs or devices at the Van-Ply crossing and that this breach was a cause-in-fact of Archon's death, we now consider DOTD's assertion that the discretionary function exception of LSA-R.S. 9:2798.1 operates to shield it from liability.
>
> **LSA-R.S. 9:2798.1** provides immunity from liability for "public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policy-making or discretionary acts when such acts are within the course and scope of their lawful powers and duties." We have adopted a two-step test for determining when this exception applies. See ***Fowler v. Roberts*,** 556 So.2d 1, 15 (La.1989) (citing ***Berkovitz v. Berkovitz v. United States*,** 486 U.S. 531, 108 S.Ct. 1954, 100 L.Ed.2d 531 (1988)). First, the court must determine whether the government action is a matter of choice. If it is not (because some statute,

regulation, or policy prescribes a specific course of action to follow), then the exception does not apply and there is no immunity. On the other hand, if the action does involve an element of choice or discretion, then the court must determine "whether that discretion is the kind which is shielded by the exception, that is, one grounded in social, economic or political policy." Id. Only those actions based on public policy are protected by the statute. Id.

In evaluating DOTD's actions in this case, we are mindful of dicta in Rick that the selection of one crossing in preference to another equally deserving crossing is more likely a policy decision and thus, by implication, shielded under the discretionary function exception. In that same case, however, we deemed as operational negligence, and thus not protected, DOTD's negligence in failing to obtain a timely response from the railroad regarding the upgrade plans after the site had been selected.

DOTD argues that in the instant case no such operational negligence occurred as the upgrade process was not unduly delayed. (FN18) While we agree with DOTD's contention that it proceeded efficiently through the federal approval process once the Van-Ply crossing was finally selected for improvement, we refuse to extend immunity to DOTD's failure to install flashing lights (or provide some other more adequate warning device) after it had acknowledged in 1983 that such action was required. DOTD's failure to follow through on, or implement, its mandate to install these warning devices is operational negligence not protected by

LSA-R.S. 9:2798.1. (FN19) We agree with the California Supreme Court observation that "[a] governmental entity may not, ostrich-like, hide its head in the blueprints, blithely ignoring the actual operation of the plan. "*See* ***Baldwin v. State,*** 6 Cal.3d 424, 99 Cal. Rptr. 145, 491 P.2d 1121, 1127 (1972). In Rick, we criticized and deemed as operational negligence DOTD's failure to monitor the railroad's approval of the planned upgrade because it resulted in delayed implementation of the decision to improve the crossing. DOTD's fault in this case lies not in any policy decision, as that decision had already been made, but in its ignoring the numerous complaints, as well as its own findings, regarding the hazardous nature of the Van-Ply crossing and the obvious need for, and its promise to install, active signalization.

DOTD has not suggested any social, economic, or political policy that was the basis for its failure to comply with its own mandate; rather, DOTD appears to have simply forgotten the obligation it had taken on, and it provides no explanation for that lapse. ***Nor does it attempt to explain why it ignored the repeated letters it had received as early as December, 1987 requesting investigation of the crossing.*** As we noted to Fowler, "[w]hen the government acts negligently for reasons unrelated to public policy considerations, it is liable to those it injures." ***Fowler v. Roberts,*** 556 So.2d 1, 15-16 (La.1989). Thus, the decision whether or not to require flashing lights at the crossing might have been one for which DOTD had no liability because tht decision necessarily involves the exercise of governmental discretion. On the other hand, the lengthy delay of over six years in effectuating a

> decision already made is not a discretionary call that qualifies for similar treatment.(**emphasis added**)

Likewise, the Parish of Jefferson introduced evidence of complaints about fires but made no attempt to explain why it did nothing during 1988-89 to protect the public, including innocent purchases, like Vicari Contractors, Inc., from the consequence of fire. Such a consequence of fire included the use of complaints of fires to justify targeting property for demolition. (**See Record: Volume III, pp. 487 *ff***)

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v.

ARGUMENT ON ASSIGNMENT OF ERRORS 6 AND 7

The affidavits which are filed and the exhibits which are referred to in plaintiff's opposition to defendant's motion for summary judgment clearly show fraud and ill practice regarding the conduct of Mr. Paul Connick, Sr., among other employees of the Parish of Jefferson, with respect to the method of enforcement pursued by Mr. Paul Connick, Sr. The petition to annul the judgment should not have been dismissed.

As an example, the affidavit of Mr. Paul Connick, Sr. filed in these proceedings on March 26, 1993 at 4:35 p.m. in statement number 14 recites that Judge Porteous gave the following order to plaintiff/appellant:

> Now, ya'll agreed to this and at ten o'clock thirty days from this date, the Parish can go in and tear these buildings down unless Vicari does what he says what he's going to do. I don't want to see you back in this court.

Mr. Paul Connick, Sr. goes on to attribute the following statement to Judge Porteous:

> Judge Porteous specifically told Vicari:
>
> You don't come back to me — you've got your orders to do what you've got to do.

The transcript of the proceedings before Judge Porteous which were held on December 15, 1993 and which are attached to plaintiff's opposition, (**Record: Vol. 1, p. 175-176**) specifically pages 14 and 15, show that judge Porteous advised counsel present that he had no recollection of making these above referenced statements attributed to him by Mr. Connick; and, then on page 15, Mr. Anzelmo, then the attorney for the Parish of Jefferson, frankly states that it is he, Mr. Anzelmo, who made the statement and that he was in error in doing so.

Mr. Paul Connick, Sr., affiant, certainly knew that the statement which he attributed to Judge Porteous was in error but, nevertheless, signed that statement under oath. Clearly, these transcripts and affidavits justify a cross-examination of Mr. Paul Connick, Sr., for impeachment purposes as well as credibility on the following issues: (**See Record: Vol. 1, 97 CA 168, pp. 162-175**)

1. Did Mr. Connick purger himself in signing that affidavit and in doing so attempt to create a justification which did not exist for the Parish Of Jefferson to demolish plaintiff's property?

2. Under what authority did Mr. Connick proceed

to destroy plaintiff's property as well as his conduct in doing so since the transcript of the agreement, as it has been identified by both the trial Court and the Court of Appeals, shows that the Plaintiff intended that he be given further notice even though it might not be recited in the judgment? **(Exhibit Vicari #10)**

3. Was the conduct of Mr. Paul Connick, Sr. in conformity with the ordinance of the Parish of Jefferson. Plaintiff strongly disputes that Mr. Connick's conduct complied with the ordinance of the Parish of Jefferson and, this issue of fact is reason enough for the Petition to Annul the judgment to survive.

vi.

ARGUMENT ON ASSIGNMENT OF ERROR NO.8

LSA - C.E. Art. 615 entitled Exclusion of Witnesses provides:

> **A. As a matter of right; exceptions.** On its own motion the court may, and on request of a party the court shall order that the witnesses be excluded from the courtroom or from a place where they can see or hear the proceedings, and refrain from discussing the facts of the case with anyone other than counsel in the case. In the interests of justice, the court may exempt any witness from its order of exclusion. However, this article does not authorize exclusion of:
>
> * * *

(2) A single officer or single employee of a party which is not a nataural person designated as its representative or case agent by its attorney.

* * *

Counsel for plaintiff/appellant at the commencement of trial moved for sequestration of witnesses. A colloquy ensued wherein the judge allowed both Messrs. Connick and Butler to be qualified as representatives of Jefferson Parish over the specific objection of counsel for plaintiff/appellant. Here, Messrs. Connick and Butler were material witnesses. Either of them were qualified representatives of Jefferson Parish; and, pursuant to **LSA - C.E. Art. 615 (2)** it is a mandatory requirement to have one remain leaving the other susceptible to plaintiff's/appellant's request for sequestration.

While undersigned counsel did state the word "okey" after the ruling of the trial judge, that was merely stated to acknowledge the ruling of the trial judge and not an acquiescence to the ruling. Undersigned counsel clearly stated his objection to the court's ruling during the colloquy which resulted in that ruling. Under these conditions, plaintiff/appellant did not receive a fair trial according to proper judicial proceedings.

CONCLUSION

The Parish of Jefferson is liable to plaintiff for the demolition of its apartment complex caused by the operational negligence of its administrative officers.

Additionally, plaintiff did not receive proper notice through its designated agent for service of process and, as such, denied plaintiff its fundamental right to due process of law. ***Housemaster Corp. v. City of Kenner,*** 374 So.2d 1240 (La. 1979) **(See testimony of Barbara Vicari. (Record: Vol. 3, p. 654, lines 6-32; p. 655, lines 1-8)**

Respectfully submitted,

/s/ Stephen J. Caire

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Attorney for Plaintiff/Appellant
Vicari Contractors, Inc.

VERIFICATION

STATE OF LOUISIANA

PARISH OF JEFFERSON

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the parish and state aforesaid,

PERSONALLY CAME AND APPEARED:

STEPHEN J. CAIRE

who being by me first duly sworn, did depose and say that he is the attorney for Relator herein and that all of the allegations of fact contained in the foregoing Petition for Supervisory Writs are true and correct to the best of his knowledge, information and belief; and that he has delivered a copy of the foregoing petition to the Clerk, Court of Appeal, Fifth Circuit, State of Louisiana, Courthouse, Gretna, Louisiana, and that he has served a copy of the foregoing brief served upon the Parish of Jefferson through their attorneys of record *Mr. Daniel A. Ranson and Michael D. Peytavin,* (Attorney for Defendant/Appellee, The Parish of Jefferson), 401 Whitney Avenue, Gretna, Louisiana 70056, (504) 362-2466, by placing a copy of same in the United States Mail, First Class postage pre-paid on this 17th day of December, 1997.

Harvey, Louisiana on this 17th day of December, 1997.

/s/ Stephen J. Caire
STEPHEN J. CAIRE

SWORN TO AND SUBSCRIBED
BEFORE ME ON THIS 17th DAY OF
December, 1997,

/s/ Illegible
NOTARY PUBLIC

APPENDIX B

Agreement/Contract Number:

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, SECTION 8
HOUSING ASSISTANCE PAYMENTS PROGRAM

SECTION 8 CERTIFICATE PROGRAM
PROJECT BASED AGREEMENT

PART I
AGREEMENT TO ENTER INTO HOUSING ASSISTANCE
PAYMENT CONTRACT

This Agreement to Enter Into Assistance Payments Contract (* Agreement *) is between the Housing Authority of the Parish of Jefferson (* PHA *),
and Vicari Contractors, Inc.
(* owner *).

The owner agrees to complete the rehabilitation of unit(s) in accordance with the work write-up attached as Exhibit B. When the rehabilitation is completed, the (owner and the PHA will enter into a Housing Assistance Contract (*Contract*) which will allow the owner to receive housing assistance payments from PHA on behalf of eligible lower-Income Families(*Families*) so that they may afford the unit(s). The PHA has executed an Annual Contributions Contract (*ACC*) with HUD by which HUD agrees to provide funds to the PHA to make these housing assistance payments.

1.1 *Significant Dates: Contents of Agreement.*

A. *Effective date of Agreement: 5-30-91* .

B. *Date of Comencement of work.* The date for comencement work (see Section 1.41A) is not later than 60 calendar days after the effective date of this agreement.

C. *Time for Completion of Work.* The date for completion of the work (see Section 1.411) is not later than 250 calendar days after the effective date of this Agreement.

D. *Contents of the Agreement.* This agreement consists of Part I, Part II , Fors HUD 52521 B (if applicable, see Section 1.2) , and the following exhibits:

Exhibit A: The approval Owner's proposal.

Exhibit B: The work write-up.

Exhibit C: Identification of units be size, address, and applicable Contract Rents.

Exhibit D: The Housing Assistance Payments Contract (* Contract*) complete with respect to the Agreement/Contract number, the identification of PHA and Owner, and Exhibit B.

Exhibit E: The schedule of completion of stages, if applicable. (This exhibit should identify the units in each stage).

Additional Exhibits: (Specify additional exhibits, such as Davis-Bacon Wage Rate Schedule, If any, If none, insert "None".)

This agreement, including the exhibits, is the entire Agreement between the RHA and the Owner.

1.2 *Applicability of Part II Provisions.*

2.1 *Training, Employment, and Contracting Opportunities for business and Lower Income Persons.* (Applies if the total of ____tract Rents for all units under the proposed contract, over its maximum (_____ if the contract, is more than $500,000 or $2,778 per month.)

( ) Applicable (✓) Not Applicable

2.2. *Equal Employment Opportunity.* (Applies only to construction contracts of more than $10,000.)

( ) Applicable (✓) Not Applicable

2.3 *Clean Air Act and Federal Water Pollution Control A-__.* (Applies if the total of Contract Rents for for all units under the proposed Contract, over the maximun term of the contract, is more than $100,000 or $550 per month.)

( ) Applicable (✓) Not Applicabale

2.8, and 2.10 *Labor Standards Requirements.* (Section 2.4, 2.* and 2.10 only when this Agreement covers nine or more units.) 2.4 HUD-Federal Labor Standards _____ions; 2.8 Wage (_____ and A.1_____ 2.1____Evidence of Unitial Completion:

((Applicable (✓) Not Applicable

2.11 *Flood Insurance.* _____

_____

( ) Applicable (✓) Not Applicable

1.3 *PHA Assurance to Owner.*

The PHA warrants that it is a "Public housing agency" as defined in the U.S. Energy Act of 19____, that if authorized to execute an Agreement in accordance with HUD Regulations and requirements and that is ____ an Act with HUD.

1.4 *Schedule of Completion.*

A. *Timely Performance of work.* The Owner agrees to begin work no later than the date for commencement of work as stated in Section 1.1(9). In the event the work is not commensed, diliquently continued and competed as required under this Agreement, the PHA may terminate this agreement: or take other appropriate action. The Owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.

B. *Time for Completion.* All work must be completed no later than the end of the period stated in Section 1.1 (C). Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date in Exhibit E, and all work on all stages must be completed no later than the end of the period stated in Section 1.1(C).

C. *Delays.* in the event there is a delay in the completion due to unforeseen factors beyond the Owner's control as determined by the PHA, the PHA agrees to extend the time for completion as appropriate.

1.5 *Rehabilitation Period.*

A. *Contract Rents.* The initial Contract Rent for each unit must be determined in accordance with HUD requirement. The Contract Rents stated in Exhibit C will be the initial Contract Rents specified in the Contract unless decreases are made by the PHA (1) in accordance with paragraph (B) of this section or (2) to correct PHA errors in determination of initial Contract Rents in accordance with HUD requirements. The initial Contract Rents listed in Exhibit C of this Agreement may not increase for any reason, including changes in rehabilitation work.

B. *Changes in Rehabilitation Work.* The Owner must obtain prior PHA approval for any change from the work specified in Exhibit B which would alter the design or quality of the rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on a reduction of Contracts Rents in the amount determined by the PHA. If the Owner takes any changes without prior PHA approval, the PHA may reduce Contract Rents in the amount determined by the PHA, and may require the Owner to ready any deficiencies prior to, and as a condition for acceptance of the units.

C. *List of Vacancies.* Sixty days prior to the scheduled completion of the rehabilitation (Where completion in stages is provided, sixty days prior to completion of rehabilitation on each stage), the Owner agrees to notify the PHA in writing of any unit(s)

expected to be vacant at the anticipated effective date of the Contract. The PHA agrees to refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner agrees to notify the PHA which units are vacant.

D. *Limitation on Requiring Tenants to Move.*

1. The Owner agrees that, during the period from submission of the Owner's proposal to the PHA until completion of the work pursuant to this Agreement, lawful residential tenants of the property (building or complex) have not been and must not be required to move from the property except in accordance with the following:

(a) Tenants may not be required to move permanent from the property.

(b) Tenants may not be required to move temporarily from the property unless:
(1.) The tenants have received adequate, advance written notice and appropriate advisory services.

(2.) deceit, safe, and sanitary temporary housing is available.

(3.) the temporary relocation period will not exceed 12 months, and

(4.) the Owner will reimburse the tenants for reasonable out-of-pocket expenses ' as

determined in accordance with HUD requirements) incurred in connection with the temporary relocation.

2. The provisions of paragraph (D(I) do not apply:

(a) to tenants of the property who comence occupancy after submission of the Owner's proposal to the PHA, if the Owner gives the tenants, prior to commencement of occupancy, adequate notice of impending rehabilitation and possibility that the tenant may be required to move from the property, or

(B) to a termination of tenancy for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or other good cause. (For this purpose, good cause does not include expiration of the lease term or a termination of tenancy because of the Owner's participation in the Section 8 Project Based Certificate Program.)

E. *Inspections.* The PHA will inspect during rehabilitation to insure that work is proceding on schedule, is being accomplished with the terms of the Agreement, and meets the levels of workmanship and materials specified in the work writeups.

1.6 *Work Completion. Work Completion.*

A. *Conference with Exhibit B.* The completed work must

be in accordance with Exhibit B. The owner is solely responsible for completion of the work.

B. *Notification of Completion.* The owner agrees to notify the PHA when the work is completed and to submit to the PHA the items described in paragraph (C) of this section.

C. *Evidence of Completion.* When the work is completed, the Owner must provide the PHA with the following:

1. A certificate of occupancy and/or official approvals as requird by the locality.

2. A certification by the Owner that:

(a) the work has been completed in accordance with the requirements of this Agreement;

(b) The unit(s) is in good and tenantable condition;

(c) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy:

(d) The unit(s) has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or

regulations, as codified by any waiver obtained from appropriate officials;

(e) any unit built prior to 1978 is in compliance with applicable HUD Lead Based Paint regulations; and

(f) If Labor Standards Requirements are applicable, the Owner has complied with the requirements of Section 2.10 of this Agreement.

D. *Review and Inspection.*

1. After receipt of the evidence of completion, the PHA agrees to review the evidence of completion for compliance with paragraph (C) of this section and, if applicable, Section 2.10

2. A PHA representative must inspect the unit(s) to be assisted to determine that the work has been completed in accordance with the Agreement. If the inspection discloses defects or deficiencies, the inspector will report these with sufficient detail and information for purposes of paragraph (f) of this section.

E. *Acceptance.* If the PHA determines from the review and inspection that the units meet the Housing Quality Standards (or other standards approved by HUD) for the program and the work has been completed in accordance with the Agreement, the

unit(s) must be accepted.

F. *Acceptance Where Defects or Deficiencies Reported.* If the work is not acceptable, the following shall apply:

1. If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions and in any other case which do not preclude or affect occupancy, and all other requirements of the Agreement have been set, the unit(s) may be accepted. The Owner shall deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to assure completion of the delayed items, and shall execute a written agreement with the PHA (in the form prescribed by the PHA) which specifies the schedule for completion of the items. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

2. If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are correctable, and whether the Contract Rents and term of the Contract should be reduced. The Owner must be notified of the PHA's decision.

G. *Notification of Nonacceptance.* If the PHA determines that, based on the review of the evidence of

completion and inspection, the units cannot be accepted, the Owner must be promptly notified of this decision and the reasons.

H. *Completion in Stages.* Where completion in stages is provided for, the procedures of this section shall apply to each stage.

1.7 *Execution of Housing Assistance Payments Contract.*

A. *Time and Execution.* Upon acceptance of the unity by the PHA, the Owner and the PHA agree to execute the Contract.

B. *Completion in Stages.* Where completion in stages is provided for, the number and types of units in each stage, and the Contract Rents for such units, shall be separately shown in Exhibit A of the Contract for such stage. Upon acceptance of the first stage, the Owner will execute the Contract and signature block provided in the Contract for that stage. Upon acceptance of each subsequent stage, the Owner will execute the signature block provided in the Contract for such stages.

C. *Form of Contract.* The terms of the Contract shall be as provided in Exhibit D of this Agreement. Prior to execution by the PHA or the Owner, all blanks in the Contract shall be completed by the PHA. There will be no change in the terms of the Contract other than as provided in this Agreement.

1.8 *Cooperation in Equal Opportunity Compliance Reviews: Nondiscrimination.*

A. The Owner and the PHA agree to cooperate with HUD in the conducting of the compliance review and complaint investigatiaons pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations.

B. 1. In the carrying out of the obligations under this Agreement, the Owner will not discrimninate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. The Owner will take affirmative action to insure that applicants that are employed, and employees are treated during employment, without regard to their race, color, creed, religion, sex, handicap or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2. The Owner to post in a conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed bay or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The Owner will incorporate the foregoing requirements of this paragraph (B) in all of its con-

tracts for project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.

1.9 *PHA and Owner Relation to Third Parties.*

A. *Nonperformance of Contractor.* The PHA has not assured any responsibility or liability for the performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as a qualified contractor or supplier under the program. The selection of a rehabilitation contractor, subcontractor or supplier is the sole responsibility of the Owner, and the PHA has no involvement in any such relationship.

B. *Injury Resulting from Rehabilitation.* The PHA has not assured any responsibility for or liability to any person including a resident of the unit undergoing rehabilitation, injured as a result of the rehabilitation or as a result of other action or failure to act by the Owner.

C. *Legal Relationship.* The Owner is not the agent of the PHA, and this agreement does not create or affect any relationship between the PHA and any lender to the Owner or any suppliers, employer, contractors or subcontractors used by the Owner in the implementation of the Agreement.

D. *Exclusion of Third Party Claims.* Nothing in this agreement shall be construed as creating any right

of a Family or other third party (other than HUD) to enforce any provision of this Agreement or the Contract or to assert any claim against HUD, the PHA or the Owner under the Agreement or the Contract.

E. *Exclusion of Owner Claims Against HUD.* Nothing in this agreement shall be construed as creating any right of the Owner to assert any claim against HUD.

1.10 *Rights of HUD if PHA Defaults Under Agreement.*

If HUD determines that the PHA has failed to comply with this Agreement, or has failed to take appropriate action, to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under this agreement, HUD may assure the PHA's rights and obligations under this Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the Owner is not in default, pay Annual Contributions for the purpose of asking housing assistance payments with respect to the dwelling units(s) under this Agreement for the duration of the Contract.

1.11 *Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials.*

No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who fomulates policy or influences decisions with respect to the Section 8 Program, and no public official or member of a governing body or State or local

legislator who exercises functions or responsibilities with respect to the Section 8 Program, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in this Agreement or the Contract or in any proceeds or benefits arising from the Agreement or Contract. This provision may be waived by HUD for good cause.

1.12 *Interest of Member of or Delegate to Congress.*

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

1.13 *Assignment of the Agreement or Contract or Interest in it.*

A. The Owner agrees that the Owner has not made and will not make any transfer in any form, including any sale or assignment of this Agreement or the Contract or the property without the prior written consent of the PHA. A change in ownership in the Owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

B. The PHA will give its consent to a transfer of the Agreement or Contract pursuant to paragraph (A) of this section if the transfree agrees in writing (in a form acceptable to the PHA) to comply with all the terms of the Agreement and Contract, and if the transferee is acceptable to the PHA.) The PHA's

criteria for acceptance of the transferee must be no more restrictive than for initial acceptance of any Owner under the Program at the time of the Owner's request.

C. If an Owner is proposing to pledge the Agreement or HAP Contract as a security for financing, the Owner must submit the financing documents to the PHA for approval. In determing the approvability of a pledge arrangment, the PHA must review the documents submitted by the Owner to ensure that:

1. The financing documents do not purport to pledge or give greater rights or payments to any party against the PHA than are provided to the Owner under the Agreement or HAP Contract and do not contain any requirements inconsistent with the Agreement or HAP Contract:

2. The PHA is not a party to any of the financing (_____than those already specified under the Agreement of HAP Contract) in connection with the _____.

3. No moderation or alteration is proposed or sale of the Agreement of HAP Contract.

1.14 *Owner Assurance to the PHA.*

A Contractor Selection. The Owner must select a _____The owner agrees to require from each prospective contractor a certification that neither

the _____ debarred, suspended, proposed for deb_____, declared _____or _____ in contract: by the Comptroller General or any Federal department or agency. The Owner _____contracts to, otherwise engage the services of, or fund any contractor that does not provide this certification.

B. *Rehabilitation Financing.* The owner agrees not to rehabilitate the units with assistance under the U.S. Housing Act of 1937 (e.g., public housing and rental rehabilitation program, housing development _____ tax except lands or other Section 8 programs) or the flexible subsidy program. The owner warrants that the units were not hehabilitated with assistance under the U.S. Housing Act of 1937 in the five years before execution of the Agreement.

C. *Ownership.* The Owner warrants that the property to be rehabilitated under this Agreement is not owned by the PHA, or an entity controlled by the PHA.

1.15 *Other Federal Requirements.*

The Owner shall comply with the requirements of the following, where applicable:

A. Executive Orders 12432, Minority Business Enterprise Development, and _____, _____ a _____ _____ business Enterprise Policy.

B Executive Order 11625, Prescribing Additional Arrangements for developing and Certifying a National Program for Minority Business Enterprises.

C. 24 CPR Part 24, Debarrent, Susension, and Limited Denial of Participation.

1.16 *HUD Requirements.* The Agreement and the contract shall be interpreted and implemented in acceptance with HUD requirements.

Termination of Contract. This Agreement or the Contract can be terminated upon atleast 10 days written notice to the _____ by the PHA or HUD if the PHA or HUD determines that the Contract Units are not cpmpleted in accordance with the PHA's written selection policy or that the Contract Units did not initialy ____ the HUD eligibility requirements.

PHA :Housing Authority of the Parish of Jefferson Owner ____ Vicari Contractors Inc.

By /s/ Barry Bordelon By /s/ Illegible

Barry Bordelon, Chairman Pres.

Official Title

Date 5/30/91 Date 5/30/91

Warning: 18 U.S.C. 1001 provides, among other things, that whereas knowingly and willingly _____ _____ _____ containing any false, fictitious, or fraudulent statement ____ _____ ____ ____ within the jurisdiction of any dapartment or agency of the United States, shall be fined not more than $10,000 or imprisioned for not more than five years or both.